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Current Topics.

The Late Mr. C. K. Francis.

LAST WEEK we referred to the great loss suffered by the London Magistracy by the death at a comparatively early age of Mr. W. H. LEYCESTER, the Bow Street Court magistrate. To-day we lament the death of another distinguished member of the legal profession and of the London Police Magistracy, Mr. C. K. FRANCIS, the Westminster magistrate. For twenty-nine years Mr. FRANCIS had carried out his duties as a magistrate with untiring industry, with marked conscientiousness, and with a humour and benevolence which endeared him to all. Before devoting himself seriously to the study of law he had made a name for himself as a cricketer and rugby player. No doubt he acquired in the course of this early training a thorough knowledge of human nature and a vast store of human sympathy that stood him in good stead in his work as a magistrate. His utterances on the bench were marked by two most commendable features: his display of humour was never unseasonable, nor did he ever take advantage of his position to introduce irrelevant comment on current topics. The following tribute paid by Sir CHARTRES BIRON at the Bow Street Court reflects the general popularity and respect in which Mr. FRANCIS was held: "It might be that in the past there had been more brilliant magistrates; it might be that there had been magistrates with more profound knowledge of the law, but there never had been a magistrate who during his long period of service, gave more satisfaction to the public and to those working with him. This was due to his large sense of duty, admirable commonsense and a sense of humane responsibility."

Incomplete Gift of Cheque.

AN INTERESTING POINT was decided by the Court of Appeal, in *Re Swinburne, Sutton* v. *Featherley*, 1925, 70 SOL. J. 64, whether a gift *inter vivos* of a cheque, which the drawer's bank had refused to honour until they were satisfied as to the genuineness of the drawer's signature, and which had never been accordingly honoured during the lifetime of the drawer, was to be considered as an effective and complete gift. Now, s. 73 of the Bills of Exchange Act, 1882, defines a cheque as a bill of exchange drawn on a banker payable on demand; and from the definition of s. 3 (1) of the same Act it is clear that a cheque is merely an order by the customer to his bankers requiring them to pay a certain sum of money to the drawer, an order which according to s. 75 of the Act, must be regarded as having been impliedly countermanded on the bank's receiving notice of the customer's death. It has nevertheless been held that a gift of a cheque *inter vivos* will be regarded as having been completed, provided that the cheque is presented to the drawer's bankers in the lifetime of the drawer, and provided that the drawer has sufficient funds in the bank to meet the amount of the cheque (see *Bromley* v. *Brunton*, 1868, L. R. 6, Eq. 275, where payment was refused by the bank owing to doubts as to the genuineness of the signature; *Hewett* v. *Kaye*, *ib.* p. 198; but see *Re Beaumont, Beaumont* v. *Ewbank*, 1902, 1 Ch. 889, where the purported *donatio mortis causa* was held to be invalid). In the above-mentioned case of *Re Beaumont*, Mr. Justice BUCKLEY, *supra*, sought to explain *Bromley* v. *Brunton* on the ground that STUART, V. C., must have held on the facts, that there was either a constructive payment of the cheque, or a good equitable assignment: see 1902, 1 Ch. 894, 895. The Court of Appeal, however, in *Re Swinburne, supra*, refused to hold on the facts that the principle in *Bromley* v. *Brunton* applied, on the ground, apparently, that the bankers had not agreed either to pay or to hold enough of the customer's balance at the bank to satisfy the cheque, subject to the signature being shown to be genuine. Moreover, in *Re Swinburne*, the current account of the customer was not sufficient to meet the amount of the cheque, although there were sufficient funds for this purpose in the deposit account. This fact, in itself, it is submitted, would not have necessarily prevented the gift from being regarded as complete. It should be noted further, that if *Bromley* v. *Brunton, supra*, cannot be explained on the footing of a constructive payment of the cheque by the bankers, it is not to be considered any longer as good law.

Right to Trial by Jury.

A SOMEWHAT interesting point of practice, which unfortunately was never determined, was raised in *Hughes Onslow* v. *Illustrated London News and Sketch, Ltd., and Arbuthnot,*

Times, 20th, 21st and 24th inst. There an application was made to the Chancery Division for the transfer to the King's Bench Division for trial by jury of an action for libel and infringement of copyright, arising out of the publication of a photograph taken of the plaintiff's wife in her husband's bearskin. It may be contended that, although the right to trial by jury was modified by the Juries Act, 1918, and s. 2 of the Administration of Justice Act, 1920, the position as it was previous to the Juries Act, 1918, has been restored by s. 3 of the Administration of Justice Act, 1925, which came into force on the 1st October, 1925. According to s. 3 of the Act of 1925, s. 2 of the Administration of Justice Act, 1920, shall cease to have effect, and provision may be made by rules of court in the same manner as if the Juries Act, 1918, and s. 2 of the Administration of Justice Act, 1920, had not been passed, for prescribing in what cases trials in the High Court are to be with a jury and in what cases they are to be without a jury, and until such rules of court come into force, the rules of court relating to the mode of trial in the High Court which were in force immediately before the passing of the Juries Act, 1918, shall have effect. It should be noted that rules in this connection have already been made: S.R. & O., 1925, No. 699/L.10 (referred to in the Weekly Notes, 1st August, 1925). According to O. 36, r. 6 (*a*), in actions for libel, either party on application will be entitled as of right to trial by jury, and there does not appear any reason why a party should be deprived of this right, merely by reason that another cause of action is joined, in respect of which there is no right of trial by jury. However, the question must be considered an open one, but at the same time attention should be drawn to the fact, that although the court was not called upon to give a decision on the point, the action for libel having been abandoned, Mr. Justice TOMLIN nevertheless, in the course of the argument, inclined to the view that the right to raise the question of libel tried before a jury could not be affected by combining another issue with the issue of libel (*Times*, 21st inst.).

A Policy-holder's Right.

A QUESTION of no little interest to holders of insurance policies, and on which several conflicting decisions have been given, appears to have been definitely determined by the Court of Appeal on the 27th ult. (*Times*, 28th ult.) in *Re City Life Assurance Company, Ltd.* The court affirmed the decision of Mr. Justice EVE in the court below [which decision was based on his own judgment in *Re National Benefit Assurance Company* 1924, 2 Ch. 339], that in claims arising in the compulsory liquidation of an insurance company, policy-holders who had mortgaged their policies to the company were entitled to set off the full statutory value of their policies from the amounts owing by them to the company on their mortgages, where the company continued to hold the mortgages. The question turned partly on s. 31 of the Bankruptcy Act, 1914, the material part of which is as follows:—

> "Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiver order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively . . ."

The bankruptcy rules are applied to the winding up of insolvent companies under s. 207 of the Companies (Consolidation) Act, 1908. In *Paddy* v. *Clutton*, 1920, 2 Ch. 554, a holder of a policy of insurance payable at the end of twenty-eight years borrowed money from the assurance company on his policy. Before the twenty-eight years expired an order was made to wind up the company and the policy was valued under the Assurance Companies Act, 1909. The policy-holder then, by leave of the court, brought an action for redemption against the company claiming to set off the value of the policy against his debt. Mr. Justice RUSSELL, following the decision of the court in *Ex parte Price*, 1875, L.R. 10 Ch. 648, decided with reluctance that s. 31 of the Bankruptcy Act, 1914, did not apply and no set off could be allowed. The contrary was however decided in *Re National Benefit Assurance Company*, by Mr. Justice EVE, who distinguished *Ex parte Price* partly on the ground that the mutual dealings provisions of the Bankruptcy Act had not at that date been extended to companies in liquidation. Moreover, it was not necessary, he held, that, in order to bring the mutual dealings section into operation, there should be mutual debts (as in *In re Daintrey*, 1900, 1 Q.B. 546). *Lee & Chapman's Case*, 30 Ch. D. 216, shows that it is sufficient if there are contractual obligations the breach of which may give rise to a claim for damages provable in the winding up, and Mr. Justice EVE held that these principles were applicable in the case of a policy-holder. In deciding, however, that s. 31 did apply and that the policy-holder was therefore entitled to set off the value of his policy against his debt, he said that *Paddy* v. *Clutton* naturally raised a doubt in his mind as to whether the conclusion at which he had arrived was sound All doubts as to the soundness thereof have now been disposed of by the decision of the Court of Appeal in *Re City Life Assurance Company*. It must be noted, however, that the court at the same time decided that where the company had assigned the mortgages of policy-holders to trustees by way of sub-mortgage, then no such mutuality of debts, credits, and dealings existed, and therefore, of course, no set off could be allowed.

Damage to Vessel not caused by Collision—Division of Loss.

AN IMPORTANT POINT, of which practitioners in the Admiralty Division should make a note, was raised in *The Batavier III*, reported in the current number of the SOLICITORS' JOURNAL. The plaintiffs' steamship, *Bromsgrove*, was lying moored in the Thames, when the *Batavier III* came up river at an excessive speed, causing so much wash and disturbance of water, that the *Bromsgrove* carried away her moorings, went aground and had to have salvage assistance. It was found, as a fact, that the damage was caused not merely by the excessive speed of the *Batavier III*, but also by the fact that the moorings of the *Bromsgrove* were improper. In these circumstances the owners of the *Batavier III* contended that they were under no liability at all, because of the contributory negligence of the plaintiffs. Now s. 1 of the Maritime Conventions Act, 1911, provides that "where by the fault of two or more vessels, damage or loss is caused to one or more of those vessels"—(*i.e.*, to one or to both of those vessels)—"the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault." In order that this provision should apply, it is not necessary that there should be any collision between the two vessels. This point was decided by the Court of Appeal in *The Cairnbahn*, 1914, P. 25. There a barge was being towed by a tug, when the barge came into collision with a steamship. The collision was caused by the negligent navigation both of the steamship and of the tug. The owners of the barge recovered damages from the owners of the steamship, whereupon the owners of the steamship brought an action against the owners of the tug, claiming to be compensated for the damage which the steamship suffered by the collision, and also for the amount they had paid to the owners of the tug. The Court of Appeal held that the case was governed by s. 1 of the Maritime Conventions Act, 1911, notwithstanding that the two vessels in fault were not themselves in collision with each other. Now, in *The Batavier III*, *supra*, there was no collision between the two vessels, but Mr. Justice HILL applying the principle laid down in *The Cairnbahn* held that s. 1 of the Maritime Conventions Act, 1911, applied, and apportioned the loss in accordance with the provisions contained in that section.

Desertion:

THE HARDSHIP ON MARRIED WOMEN BY MISAPPLICATION OF THE DOCTRINE OF *RES JUDICATA*.

MANY a married woman has been unjustly treated by the doctrine of *res judicata* and by a misapplication of what constitutes cohabitation and desertion. The history of the application of *res judicata* to suits by wives for maintenance by their husbands may be shortly sketched. In the case of *Re Duckworth*, 1889, 5 T.L.R. 609, a summons by the wife under the Married Women (Maintenance in Case of Desertion) Act, 1886, on the ground of her husband's desertion was heard on the 1st September, 1886, when the husband offered to take his wife back and the justice therefore refrained from making an order. Subsequently he did not provide a home and maintain her, and on the hearing on the 5th April, 1889, of a second summons, the justice held that the offer by the husband on the first hearing was not made *bona fide*, and they made an order on him for her maintenance. On appeal, COLERIDGE, L.C.J., and MATHEW, J., upheld the order. There was no hint that the matter was *res judicata* in those days. It might be urged that it was not *res judicata* as the first summons was dismissed on conditions. The facts of the next case, *R.* v. *Williams*, 1894, 29 L.J. 460, were that early in 1894 the wife applied for an order of maintenance under the Act of 1886. The justices found that though she had been deserted in 1889 yet desertion was not a continuing offence. A case was stated on the point of law, but not argued, as it did not reach the Crown Office within the prescribed time. She then issued a second summons on the ground of desertion, and the order was again refused on the same ground. A rule *nisi* was made absolute by MATHEW and KENNEDY, JJ., they holding that desertion was so far continuous that the six months' limit laid down by the Summary Jurisdiction Act, 1848, s. 11, did not apply. Again there is no hint of *res judicata*. But this decision can be justified on the analogy of bastardy appeals.

Where a bastardy order has been made and quashed on appeal at the quarter sessions, the decision is final and a further summons cannot be granted. If, however, the order was quashed on a matter of form, such as the omission of the words "for the maintenance and education of the child," or from the mother and her witnesses being accidentally absent on the hearing of the appeal, a fresh summons may be issued, the decision at quarter sessions not being a decision on the merits ("Stone's Justices' Manual," 1925, p. 350).

In 1901 we come across the beginning of the trouble. In *Pickavance* v. *Pickavance*, 1901, P. 60, the wife on the 26th June, 1899, had made a written complaint alleging that her husband had been guilty of persistent cruelty towards her and had thereby caused her to leave him. On the 25th September, 1899, she made another complaint to the same effect. The first summons was dismissed with a suggestion from the justices that the wife should make another effort to live with her husband. The second summons was withdrawn. On the 5th November, 1900, on the hearing of a third summons, the justices made an order for her maintenance on the ground of persistent cruelty. The wife had left her husband fourteen months before, so that it was quite clear that her third complaint was out of time, the offence of persistent cruelty being complete when the wife had left her husband by reason of such cruelty (*Rowlands* v. *Rowlands*, 86 L.T. 125). In the Divorce Divisional Court the order was quashed upon this ground. But the President (Sir F. JEUNE) held also that the withdrawal of a summons put an end to the subject of the complaint embodied in it, and that if a summons was dismissed or withdrawn, the matter was *res judicata*. Needless to say these observations were merely *obiter dicta*. The question whether after the dismissal of the first summons the husband's neglect to provide for and maintain his wife constituted desertion was not raised. In 1911 the case of *Stokes* v. *Stokes* 1911, P. 195, was heard. On the 9th January, 1911, a summons for desertion on the 8th November, 1897, was dismissed, but on the 5th April, 1911, on a second summons for desertion on the same date, an order for maintenance was made. This was quashed on appeal on the ground of the matter being *res judicata*. *Blackledge* v. *Blackledge*, 1913 P. 9, is a similar case. It is to be noted that no attempt was made to prove desertion on a date subsequent to the dismissal of the first summons. In *Kenny* v. *Kenny*, *infra*, the court thought that though the case of *Stokes* v. *Stokes* was rightly decided on its own facts, the *dicta* in that case might have to be considered.

In *Hopkins* v. *Hopkins*, 1914, P. 282, we find the court having to deal with a case where the first summons had been withdrawn, and an order made on a second summons alleging the same offence. The President, Sir SAMUEL EVANS, declared, "Upon the whole, I think we ought in cases between husband and wife not to depart from the opinion solemnly expressed by our two eminent predecessors" (meaning the learned Presidents who decided *Pickavance* v. *Pickavance*, and *Stokes* v. *Stokes*). But he went on to say, "it is not every withdrawal of a summons that necessarily disposes of the right of a wife on similar facts to take further proceedings. The withdrawal might be on conditions."

It would be well now to describe the hardships that may be caused to married women by the application of the doctrine of *res judicata*, and then to shew how the difficulty may be circumvented without infringing that doctrine. Of course, in a simple case of desertion, where the husband has left the matrimonial home and his wife therein, and on the hearing does not allege just cause or excuse, there is generally not much dispute about the facts or the law. Difficulties arise where the husband has told his wife to go, but a few days after her leaving has repented and urged her to return, and she attempts to justify her refusal to do so on the ground of his ill-treatment of her in the past. Or again the wife, after consulting her solicitor and on his advice, leaves her husband for alleged persistent cruelty.* If her application for a maintenance order in this class of case is dismissed what is the position of the wife? In some parts of the country it has been held that if there has been no fresh cohabitation after the dismissal, there can be no desertion, and that the wife's only remedy is to apply to the High Court for an order of restitution of conjugal rights. As she has no money in practice, this remedy is of no avail.

* Since the 1st October last a wife may obtain a maintenance order on the ground of cruelty or neglect to maintain without leaving. See Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (1).

(To be continued.) D.

Mortgage of Ship with Notice of Charter.

SEVERAL points of great importance were raised in the *Lord Strathcona*, 41 T.L.R. 638, 1925, P. 143, but unfortunately the one question, on which a direct decision would have been welcomed, was left open, namely, the question whether a mortgagee of a ship is bound by a charterparty of which he had notice before the mortgage.

In the *Lord Strathcona* the facts were shortly as follows. Before the completion of the vessel, a charterparty had been entered into by the building owners for the seasonal employment of the vessel for a number of years. There were several changes in the ownership of the vessel, and eventually when the ship came into the hands of the present owners, it was subject to two mortgages, both of which were vested in The Old Colony Trust Co. of Boston, U.S.A. There was no question about the mortgagees being aware of the existence of the charterparty at the time of the respective mortgages, and before the execution of the second mortgage, the plaintiff's mortgagees had received notice from the charterers of the existence of the charterparty and its terms.

While the charterparty was subsisting, the mortgagors made default and the mortgagees therefore took steps to enforce their security. The mortgagees obtained judgment

by default, and an order for the appraisement and sale of the vessel was made. The charterers thereupon intervened. Mr. Justice Hill, however, found it unnecessary in his judgment to deal with the question whether the mortgagees were bound by the charterparty, inasmuch as he found as a fact that the owners were incapable of further performing the charterparty beyond all hope of recovery. The owners, the learned judge pointed out, were in financial difficulties, and were not in a position to employ the ship, even if any profitable freight should offer. While the ship lay idle, lay-up expenses would be running which the owners could not meet, and the ship would eventually become subject to possessory liens or rights of river, harbour or dock authorities to detain or sell, and to maritime liens for wages, since someone had to be kept on board. Moreover, the vessel's survey was overdue and could not be further postponed and extensive repairs were necessary in order to make her seaworthy. In holding therefore that the mortgagees were in these circumstances at liberty to exercise their powers, Mr. Justice Hill was following the principle laid down in the latter part of the headnote to *De Mattos* v. *Gibson*, 1858, 4 De G. & J. 276, which is as follows :—

"The court will not affirmatively enforce a charterparty, but it is implied in such a contract that if the charterer provides a cargo, the ship shall not be employed for any other purpose ; and a mortgagee with notice of a prior charterparty effected by the mortgagor will be in general restrained from doing anything to prevent its performance. Where however the mortgagor in such case was unable to put the ship into proper repair to make the voyage or otherwise to perform the contract, and the charterer took no step for several months with respect to it. Held: That the mortgagee ought not to be further restrained from exercising the power contained in the mortgage." (See also judgment of Lord Chelmsford, *ib.*, pp. 299, 301).

The position of a mortgagor and mortgagee of a ship is dealt with by *s.* 34 of the Merchant Shipping Act, 1894, which provides that :—

"except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof."

While therefore the mortgagor remains in possession, his position is in general that of an ordinary owner, but by reason of the very nature of his security, the mortgagee is exposed to greater risks than mortgagees of other chattels, *e.g.*, maritime liens, actions *in rem* by third persons, etc., The most valuable rights, that the mortgagee may exercise are the taking possession and sale of the mortgaged vessel. Inasmuch however as the vessel will usually be under charter at the time of the purported exercise by the mortgagee of his rights, there will be conflicting interests, *i.e.*, that of the mortgagee on the one hand and that of the charterer on the other, between which it will be necessary to decide. It should further be noted that it is not only in cases where the principal is due and the interest is in arrear that the mortgagee may exercise his rights with regard to taking possession of the ship ; he may equally exercise these rights in cases where his security is impaired. This was expressly decided in *The Manor*, 1907, P. 339, where the mortgagee was held entitled to possession of the ship because the mortgagor had, *inter alia*, allowed it to remain burdened by maritime liens. See also *Law Guarantee and Trust Society* v. *Russian Bank for Foreign Trade*, 1905, 1 K.B. 815—(Charterparty for carriage of contraband).

This general principle was expressed by Lord Westbury in *Collier* v. *Lamport*, 34 L.J. Ch. at p. 200, as follows :—

"As long therefore as the dealings of the mortgagor with the ship are consistent with the sufficiency of the mortgagee's security, so long as those dealings do not materially prejudice and detract from, or impair the sufficiency of the security of the vessel as comprised in the mortgage, so long is their parliamentary authority given to the mortgagor to act in all respects as owner of the vessel, and he has authority to act as owner, he has, of necessity authority to enter into all those contracts touching the disposition of the ship which may be necessary for enabling him to get the full value and full benefit of his property."

(*To be continued.*) S.

Law of Property Acts.

POINTS IN PRACTICE.

In this column questions from Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Manager, "The Solicitors' Journal," Oyez House, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only, and be in triplicate.

The Doctrine of Conversion.

22. *Q.* As to the last question on p. 890, first column, current Sol. J., does the new Act upset the old doctrine that realty, subject to a trust for sale, becomes personalty ?

A. The new Acts do not abolish the equitable doctrine of notional conversion, under which, for example, a beneficiary entitled to personalty under a will may also take realty, and *vice versa*. The physical quality of the land, however, remains and will remain untouched by the doctrine, and the requirement of s. 14 (2) of the Trustee Act, 1925 obviously applies to land whether notionally converted by equity or otherwise. Incidentally, with similar death duties on land and personalty, and similar devolution on intestacy, the application of the doctrine will become considerably less frequent.

Sale by Mortgagees.

23. *Q.* With reference to the first question of Points in Practice under the L. P Acts contained in your issue of the 17th inst., on p. 22, it seems to me that the purchaser is protected under the last paragraph of clause 107, (1).

A. Section 107 (1) of the L. P. Act, 1925, provides that, when a mortgagee exercises his power of sale, and gives a receipt to the purchaser, the latter shall not be concerned to enquire whether any money remains due to the vendor under his security. This, of course, continues the present law contained in s. 22 (1) of the Conveyancing Act, 1881, and gives the purchaser safety in the absence of the endorsed receipt on the mortgage, operating under s. 115 of the L. P. Act, 1925.

The Meaning of "Purchaser" in the L.P.A., 1925.

24. *Q.* With regard to the words "except that in Part 1 of this Act, and elsewhere where so expressly provided," in s. 205 (1) (xxi), do the words "where so expressly provided" qualify the word "elsewhere" only, or do they govern the expression "except that in Part I of this Act and elsewhere" ?

A. It seems clear that the first interpretation is the true one, both as conforming to the general doctrine "*Ad proximum antecedens fiat relatio nisi impediatur sententia*" (see for example, *Esdaile* v. *Maclean*, 1846, 15 M. & W. 277), and because the second construction would render the words "in Part I of this Act and elsewhere" mere surplusage, for they would be equivalent to "in this Act" which have already appeared as the first and governing words of the whole subsection. The word "purchase" in s. 132, stands by itself, and no doubt must be construed without reference to the definition, and as it would be before the Act.

"Purchaser" in the L.P.A., 1925, and L.C.A., 1925.

25. *Q.* Section 13 (2) of the L.C.A. provides that certain land charges, if unregistered, shall be void against a purchaser for valuable consideration, whilst others, if unregistered, shall be void against a purchaser for money or money's worth. Section 205 (1) (xxi) would appear to apply one definition only to the word "purchaser," in Part I of the L.P.A., 1925, including ss. 2 and 3. Since these two latter sections deal with the question of purchasers acquiring a legal estate, free from equitable interests (including both classes of land charges above referred to), we find it rather difficult to fit in the meaning given to the word "purchaser" in ss. 2 and 3 of the L.P.A., with the two alternative meanings according to the interest to be overreached in s. 13 (2) of the L.C.A., 1925.

A. If the provisions of the two Acts are examined carefully there does not appear to be any inconsistency between them

A purchaser for money or money's worth will acquire the protection of ss. 2 and 3 of the L.P.A., 1925, also of s. 199 of that Act, and of ss. 13 and 14 of the L.C.A., 1925, and the different protections, no doubt, will be cumulative. A purchaser for valuable consideration, as distinct from a purchaser for money or money's worth (*e.g.*, a beneficiary under an ante-nuptial marriage settlement) will receive no protection under ss. 2 and 3 of the L.P.A., 1925, but will be protected by s. 199 and ss. 13 and 14 of the L.C.A., 1925, subject to the proviso in s. 13 (2), where such sections apply. But in neither case is the protection afforded by one Act cut down or modified by the other, and purchasers of each class will be entitled to rely on both, so far as they apply. "Purchaser" in the L.C.A., 1925, has the wider of the two senses: see definition in s. 20 (8).

As to the Construction of s. 28 (1) of the L.P.A.

26. *Q.* Does s. 28 (1) give to the trustees for sale all the powers of a tenant for life and the trustees of a settlement under the S.L.A., 1925, or is the wording of the section in any way limited by the marginal note "Powers of Management, etc., conferred on trustees for sale." We believe that the usual rule is that marginal notes do not govern the construction of the text of an Act, but the question is asked because it has been suggested elsewhere that it is likely that the sub-section refers to management powers only?

A. There have been conflicting *dicta* as to the effect of a marginal note to a statute. But, if we assume for the purpose of the above question that the court *is* entitled to read the marginal note for the purpose of interpreting the text, and that the marginal note controlled the text, the expression "etc." must be given its due meaning and not rejected as surplusage. The expression "etc." means "and the rest," and is obviously a reference to the powers conferred on trustees for sale other than and in addition to those of management. Thus, the width of the marginal note cannot be less than the width of the text.

Purchasers and Death Duties.

27. *Q.* We gather from ss. 16 and 17 of the L.P.A., 1925, that in the case of unregistered land it will still be necessary for a purchaser to see that a certificate of discharge from death duties is obtained from the Commissioners of Inland Revenue in respect of any death duties which have been registered as land charges under the L.C.A., 1925, but that in the case of registered land by virtue of s. 73 (1) of the Land Registration Act a purchaser will be able to take a transfer free from all claims for death duties, notwithstanding the fact that such claims have been entered on the register.

Is this the correct interpretation of the position, and, if so, what is the reason for unregistered land and registered land being treated differently in this respect?

A. The inference made appears to be correct. The reason why seems rather a question of the policy than of the interpretation of the Act, and perhaps could better be answered by Lord Birkenhead or the Attorney-General; it is suggested, however, that s-ss. (7) and (8) of s. 73 of the L. R. A., 1925, furnish the clue. Directly the Registrar receives notice to register a disposition which would operate under s-s. (1), it is his duty to give notice to the Commissioners of Inland Revenue, who therefore at once know when a sale has taken place, and can require payment of death duties out of the proceeds under s-s. (5). Thus, in the ordinary case, the Commissioners are in a very safe position, and they are even content to forgo the advantage of s. 55 (1), which allows a cautioner in certain circumstances to delay registration of a document adverse to him, for, by s-s. (8) the claim for death duties is cancelled after the Commissioners have been notified. On the other hand, the Commissioners have no such means of knowing when a sale of unregistered land takes place, and the burden of seeing that the land is freed is therefore placed on the purchaser. F.

A Conveyancer's Diary.

The New Power of Advancement.

In the Conveyancer's Diary for the 17th ult., p. 23, the new power of advancement given by the Trustee Act, 1925, s. 32, was discussed. No reference was made in the discussion to s-s. (3) of that section. Consequently, as a correspondent has kindly pointed out, a reader might easily assume that trustees may, after 1925, exercise the new power in respect of trusts created before the commencement of the Trustee Act, 1925. As a matter of fact, however, s. 32 does not apply to trusts constituted or created before the 1st of January, 1926: see s. 32 (3), *ib.* No doubt the main object of the section was to shorten the form of settlements. Obviously it could not be made retrospective without affecting beneficial interests.

Effect of a Declaration of Trust.

A question touching the operation of the new Property Statutes, and which is of considerable interest to conveyancers has been raised by a correspondent. The problem may be briefly stated in this way: The owner of an estate in fee simple in land on 1st January, 1926, makes a declaration of trust in favour of a number of persons of full age in undivided shares; what is the effect of such a declaration? It is quite obvious that the transaction is one which a conveyancer may come across any day in the ordinary course of practice; and it appears such a perfectly simple one.

The first difficulty in such a case is that the declaration does not constitute a settlement within ss. 1 (1) and 117 (1) (xxiv) of the S.L.A., 1925; and the expression "settlement" has the same meaning in the L.P.A., 1925: see *ib.*, s. 205 (1) (xxvi).

It would appear, however, that the declaration of trust is a "conveyance" within the definition of that expression contained in para. (ii), *ib.*, for it clearly is "an assurance of property or of an interest therein by any instrument." This would seem to make s. 34 (2), *ib.*, applicable. But at this point we are faced with another difficulty. In this sub-section the expression "grantees" is used, and the fact that "grantees" and not "conveyees" is the expression used, might suggest that the application of the sub-section is limited to formal conveyances containing express grants. It is submitted, however, that "grantees" in the context has exactly the same meaning as "conveyees," *i.e.*, persons taking under an assurance by any instrument not being a will. If, then, as we suggest, s. 34 (2) applies to the case, what is the effect of the declaration of trust? The immediate effect is that the declarer becomes a trustee of the land in trust for a number of persons of full age absolutely entitled. These persons in favour of whom the declaration of trust has been made, or, if they exceed four in number, the four first named in the conveyance, are entitled to call for a transfer of the legal estate to themselves as joint tenants upon the statutory trusts, and so as to give effect to the rights of the persons who would have been entitled to the shares had the conveyance operated to create those shares.

Suppose however that the declaration of trust is made in favour of a number of persons as joint tenants, then s. 36 (1) of the L.P.A., 1925, will apply, and the property will be held upon trust for sale "in like manner" as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity. It is submitted however that in this case the result will not be the same in all respects as where the declaration is made in favour of persons in undivided shares; but that in this case the declarer will hold on trust for sale and will be able to make title, therefore, after another trustee has been appointed to fulfil the statutory requirements with respect to payment of purchase money to two or more trustees. The words "in like manner," it is conceived, refer to the statutory trusts and the method of

giving effect thereto and do not refer to the person or persons who are to hold upon such trusts.

Yet another problem may arise. What if the declarer is only entitled to an equitable interest and his declaration is made in respect of that interest? It is conceived that this does not affect the solutions suggested above, because land is defined in the L.P.A., 1925 (see s. 205 (1) (ix)), to include "any benefit in or over or derived from land." This, it is submitted, would include an equitable interest in land.

Obviously after 1925, if undivided shares are to be created, the proper course will be to vest the land in trustees for sale on trust to hold the net proceeds in the requisite shares.

Landlord and Tenant Notebook.

The Law of Property Act, 1925 (*continued*) **—V. Abolition of** *Interesse Termini.*

In order to understand the changes in the law effected by the Law of Property Act, 1925, by the abolition of the "*interesse termini*," it is necessary to understand what the law in this respect has been hitherto. Inasmuch as livery of *seisin* was never required for the creation of a term of years, such estates could be created *in futuro*; a lease for life, on the other hand, could *not* be so created, since it was an estate of freehold conferring *seisin*. In order, however, that the interest of the grantee of the term *in futuro* should be perfected, it was necessary that he should enter into possession. In the meantime, therefore, the only right he had was a future right of entry or an "interest in the term" (*interesse termini*), but no estate was thereby vested in him.

The importance of this doctrine is best illustrated by the case of *Lewis* v. *Baker*, 1905, 1 Ch. 46, the facts of which were shortly as follows: Baker was the assignee of a lease expiring on 6th July, 1904. While there were more than two years of the term to run, the reversioner in fee, in May, 1902, agreed to grant Baker a reversionary lease of the same premises for seventy-three years, commencing *in futuro* from the 6th July, 1904, which was the date of the expiration of the original lease. Subsequently, in 1903, Baker, by an agreement in writing, agreed to let the premises to one Haddon for twenty-one years from the 29th September, 1903, and Haddon thereupon entered into possession. No express right of distress was given by the said agreement. The plaintiff Lewis subsequently occupied the upper part of the premises as tenant to Haddon. On 19th February, 1904, while the original lease had not yet expired, Baker distrained the goods of Lewis for £57, rent due from Haddon. The point in issue was whether Baker had any right to distrain.

It was held that, inasmuch as Baker had leased the premises to Haddon for more than his *original* term, he could not distrain for want of a reversion, the agreement by the reversioner in fee to grant a reversionary lease to Baker having merely created an *interesse termini*, which could not ripen into an estate until entry, and the original term not having therefore been enlarged.

To illustrate the nature of an *interesse termini*, reference may be made to the following passage from Mr. Justice Swinfen-Eady's judgment in that case (*ib.*, at pp. 51, 52): "Such an interest merely gives a right to have the possession at a future time. It is a right over an estate. The whole estate, notwithstanding that right, is in the lessor. The right may be granted away as a right, or extinguished by a release, but it cannot be conveyed as an estate. It has all the properties and consequences of a right only, not of an estate" (see *Doe* v. *Walker*, 5 B. & C. 111; *Beardman* v. *Wilson*, L.R. 4, C.P. 57; *Hyde* v. *Warden*, 3 Ex. D. 72).

Now s. 149 (1) of the Law of Property Act, 1925, abolishes the *doctrine of interesse termini*, providing, in s-s. (2) thereof, that as from the 1st January, 1926, all terms of years absolute shall, *whether the interest is created before or after that date*, be capable of taking effect in law or in equity, according to the estate, interest or powers of the grantor, from the date fixed for the commencement of the term, *without actual entry*.

The effect of this alteration in the law is, therefore, that it will be possible to create a legal lease to commence *in futuro*, so that the grantee of a reversionary lease will have in effect a legal estate, and not merely a legal right of entry or interest in a term. To apply the new law to facts similar to those in *Lewis* v. *Baker*, inasmuch as Baker would have a legal lease, and not merely an *interesse termini*, the original term would have to be regarded as having been enlarged, so that at the time of the distress, the reversion, upon the sub-lease to Haddon, would have been vested in Baker, thereby giving him the right to distrain. This, at any rate, it is submitted, is one of the effects of the alteration in the law.

There is one limitation, however, to the power to create legal leases to commence *in futuro*, and this limitation is contained in s. 149 (3) of the Law of Property Act, 1925. According to that sub-section, it is not permissible to create a term (at a rent or in consideration of a fine) to take effect more than twenty-one years after the date of the instrument purporting to create it, and in such case the term purported to be created will be void. Similarly any agreement to grant a lease of such a term will be void. Thus a lease executed in 1926, which purports to create a term, *at a rent or in consideration of a fine*, to commence from 1950 (being more than twenty-one years therefrom) will be utterly void. But an agreement made in 1926, to grant a lease for a term to commence in 1948, will not, it is submitted, be void, if the lease executed in pursuance of such agreement, and creating the term, is executed subsequently to 1927.

It should, however, be noted that the above provisions contained in s-s. (3) are not to apply to "any term taking effect in equity under a settlement, or created out of an equitable interest under a settlement, or under an equitable power for mortgage, indemnity or other like purpose."

S.

Correspondence.

Register of Manorial Documents.

Sir,—On 16th July you were good enough to give publicity to my appeal to the owners and stewards of Manors to communicate with the Public Record Office and give particulars which will enable a register of the manors and their owners to be compiled.

This register is needed in order to enable me to fulfil the duty as to the charge and superintendence of all manorial documents, imposed upon the Master of the Rolls by the Law of Property Acts, 1922-4.

Although my appeal has met with a generous response from many quarters, and has evoked information with regard to nearly four thousand manors, there are still many, both existing and obsolete, concerning which we have received no particulars.

May I ask you to let me make this known through your columns; and also to urge owners and stewards of manors to communicate with the Record Office without delay? I need hardly add that the sole purpose of this register is to facilitate proper arrangements being made so that the valuable fount of history contained in manorial records may not be lost by thoughtless dispersal or even destruction. In many cases, these records are already in good custody and properly preserved. As to these no change will be required: but it will be my duty to make full investigation and to see that proper preservation is provided for all manorial documents.

ERNEST M. POLLOCK.

Public Record Office,
Chancery Lane, W.C.2,
21st October.

Limitation to the Principle in the Russell Case.

Sir,—I feel constrained to write to you with reference to the last paragraph of your "Note" on the above subject in your issue of the 17th inst., in which you say "and we think we should be endorsing the opinion of the profession and the public alike that the sooner this rule is swept away the better."

Surely, sir, you have written this without sufficient thought. To my mind, it is highly desirable that, where a husband and wife have slept together, it should not be open to the husband to give evidence of non-intercourse. If this evidence had not been excluded in the *Russell Case* in the House of Lords, Mrs. Russell would have lost her case, and, in my view, a grave injustice would have been perpetrated. *It was not right that the jury should have been asked to decide between the evidence of Mr. and Mrs. Russell on this point.* They *had* to choose between them and chose to believe the husband. But there could be no certainty that they were right. Moreover, I gathered that even the husband admitted that something took place. It is admitted by doctors that it is possible for conception to take place in extraordinary ways, provided the husband is present.

It is not often that I can get a very clear view of problems, but I am convinced on the point that all such evidence should be excluded as tending to promote justice.

NOTE.—The first jury disagreed, and no doubt they felt they *must* give a decision in the re-trial.

A. M. T.

20th October.

Sir,—Your correspondent has been considering the principle of *Russell* v. *Russell* in the light of the actual facts of that case, while I have been regarding it in its broader aspects. Why, for instance, should a man who has been living apart from his wife, say in York, for the whole space of four years, be precluded from giving that evidence *himself*, if the wife who has been living, say, in London has given birth to a child, three and a half years after the separation ?. If it is a question of oath against oath, apart from the fact that no reasonable jury would find non-intercourse, in cases at any rate where the parties slept together, the law could provide that the evidence of the husband should be corroborated.

"S."

Pentonville Prisoners Library.

Sir,—On behalf of the prisoners in Pentonville Gaol, may I appeal to your readers to send me books? The library is plentifully supplied with light fiction of the Zane Grey and Ethel M. Dell type, but there is a serious shortage of good educational literature, technical works and standard novels.

Those who think of responding are asked only to send volumes in a clean condition, and not torn or ragged. They may be sent to me at the following address:—Toynbee Hall, Commercial Street, E.1.

JAMES STEVENSON.

27th October.

INSURANCE FOR THE WORKER.

A conference on social insurance in its national and international aspects is to be held under the auspices of the League of Nations Union from 23rd to 26th November, at the London School of Economics. Sessions of the conference will deal with the following aspects of the problem: The Government Pensions Scheme; the unification of social insurance; health insurance; workmen's compensation and accident prevention; unemployment insurance; family insurance, and the international aspects of social insurance.

Among those who have already consented to speak are the following: Sir William Beveridge, Mr. H. B. Butler, Sir Kingsley Wood, M.P., Sir Alfred Mond, M.P., Mr. Arthur Hayday, M.P., Sir Henry Slesser, K.C., Mr. J. L. Cohen, Dr. Marion Phillips and Mr. Alban Gordon.

CASES OF THE WEEK.

Probate, Divorce and Admiralty Division.

The "Batavier III." Admiralty Court. Hill, J. 15th October.

DIVISION OF LOSS—DUAL CULPABILITY—DAMAGES NOT CAUSED BY COLLISION—MARITIME CONVENTION ACT, 1911, 1 & 2 Geo. 5, c. 57, s. 1.

The operation of the Maritime Conventions Act, 1911, 1 & 2 *Geo.* 5, *c.* 57, *s.* 1, *which deals with damage or loss caused by the fault of two or more vessels, is not confined to cases of collision, but applies where damage was caused partly by wash and partly by bad mooring.*

The Cairnbahn, 1914, P. 25, *applied.*

Action for Damage.

This was an action for damage caused to the "Bromsgrove" in the following circumstances: On the 4th January, 1925, the "Bromsgrove" a vessel of 1,445 tons, was lying moored with her head up the river at the Deptford Buoys, when, as was found as a fact, the "Batavier III," a vessel of 1,333 tons, came up-river at an excessive speed, causing such a wash that the "Bromsgrove" carried away her moorings and went aground, and required salvage assistance. The excessive speed was denied, and it was alleged that the "Bromsgrove" broke away because she was inadequately and insufficiently moored, and it was further contended that in any event the rule as to division of loss only applied in cases of collision, and finally that if the breaking adrift was contributed to by improper mooring the "Bromsgrove" could not recover as she was guilty of contributory negligence.

HILL, J., in the course of a considered judgment, said: I am advised by the assessors that the position of the moorings of the "Bromsgrove" rendered them inefficient. I am also advised that the speed of the "Batavier III" was excessive in the particular locality and caused a wash likely to be dangerous to vessels moored. Two causes therefore contributed to the breaking adrift of the "Bromsgrove"—the wash and the position of the moorings—and in my judgment the proper finding of fact is that the damage to the "Bromsgrove" and the loss to her owners was caused by the fault of those in charge of both vessels. If so, the Maritime Conventions Act, 1911, applies. Section 1 provides that—

> "Where by the fault of two or more vessels damage or loss is caused to one or more of those vessels . . . the liability to make good the damage or loss shall be in proportion to the degree in which each vessel is in fault."

That section, as has been pointed out by Lord Parker and Warrington, J., in *The Cairnbahn*, 1914, P. 25, is not confined to cases of collision. I hold both vessels to blame, and as I think that excessive speed in a river like the Thames is a graver fault, I condemn the "Batavier III" in three-fifths and the "Bromsgrove" in two-fifths of the damage.

COUNSEL: *R. F. Hayward; E. Aylmer Digby.*

SOLICITORS: *Botterell & Roche*, for *Botterell, Roche and Temperley*, Newcastle-on-Tyne; *R. H. Behrend and Co.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

CASES OF LAST SITTINGS.

High Court—Chancery Division.

Thorn and Others *v.* **Madden.** Tomlin, J. 17th July.

LANDLORD AND TENANT—LEASE—COVENANT AGAINST USING PREMISES OTHERWISE THAN AS A PRIVATE DWELLING-HOUSE—COVENANT AGAINST USING FOR A TRADE OR BUSINESS—PAYING GUESTS—BREACH OF COVENANT.

When a person of set purpose occupies a house which is beyond her means and for the purpose of supplementing such means and continuing to live in the house, secures visitors to

come and live there for long and short periods upon payment of sums for board and residence, it is impossible to say that the house is being used as a private dwelling-house only, and accordingly the covenant not to use it otherwise than as a private dwelling-house is broken.

When the receiving of paying guests is done as a permanent process, and the house is kept available for the accommodation of any approved person who is prepared to pay, such house is being used for the purpose of a trade or business.

In this action the plaintiff claimed an injunction to restrain the defendant from "using or permitting to be used the premises for the purposes of a boarding-house or of letting lodgings and/or of receiving lodgers and/or paying guests, or of a trade or business, or otherwise than as a private dwelling-house or professional residence." The facts were as follows: A certain dwelling-house in Chelsea was sublet for a term of seven years from 25th March, 1921, at the yearly rent of £180. The sub-lease contained a covenant by the tenant not at any time during the tenancy to "use or permit the said dwelling-house and premises to be used for the purpose of any trade or business whatsoever . . . or otherwise than as a private dwelling-house or professional residence only." The plaintiffs were the tenants of the original lessors, and they themselves held the property upon a lease which contained a similar covenant. The defendant was an assign of the original sub-lessee. The defendant in her defence, stated that she had taken, and was taking, friends and others as paying guests, who had always been secured privately and not by advertisement, and denied the breach of covenant. The case was fought on this admission, and certain correspondence offering to take paying guests. Evidence was given by the defendant that it was generally old friends who were taken as paying guests or persons recommended by a friend. The paying guests generally contributed a weekly sum towards the expenses and took their meals with the family. There were three bedrooms in the house set apart for their use.

TOMLIN, J., after stating the facts said: "In my judgment, when, as in this case, a lady is of set purpose occupying a house beyond her means, and to supplement those means, is securing visitors to come and live there for long or short periods upon payment of sums for board and residence, it is impossible to say that the house is being used as a private dwelling-house only. It is being used in much the same way as a lodging-house or boarding-house, although there may be differences in the general methods employed. Moreover, when paying guests are received as a permanent process, and the house left available for the accommodation of any approved person who is prepared to pay, this comes within the category of a business. It is not like the case where the owner of a house wishing to have a friend to stay with him but, unable to afford the expense of entertaining him, says he will be delighted to have this friend for a visit if he will pay for his keep. There has been in this case a breach of both branches of the covenant, and there must be an injunction on the terms of the covenant."

COUNSEL: *Gavin Simonds*, K.C., and *Baden Fuller*; *Ross-Brown*, K.C., and *N. Cockshutt*.

SOLICITORS: *Holt, Beever & Co.*, *Slaughter, Colegrave* and *Cockshutt*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

NEW SUFFOLK JUSTICES.

The Lord Chancellor has appointed the following new Justices for the County of Suffolk:—Sir Basil Shillito Cave, Woodbridge; Colonel G F Francis, Worlington; Lieutenant-Colonel M. B. Robinson, Long Melford; the Rev. W. Bankes Williams, rector of Glemsford; Dr. C. W. Biden Laxfield; Mrs. Maud Hayward, Needham; Mrs. Minnie Parker, Halesworth; Mr. J. W. M. Brooke, Lowestoft; Mr. A. W. Cocks, Bungay; Mr. F. J. Farrell, Beccles; Mr. C. Hardy, Leiston, and Mr. E. H. M. Willan, Brome.

Solicitors' Managing Clerks' Association.

LAW OF PROPERTY ACTS LECTURE

(*Fourth of the Series*),

BY MR. A. F. TOPHAM, K.C.,

ON TUESDAY, 3RD NOVEMBER, 1925.

[*Verbatim Report.*]

MR. TOPHAM: Mr. Chairman and gentlemen, in my lecture last Wednesday you may remember I was talking about land charges and the searches at the Land Registry which will have to be made in future. I have had a very interesting letter from the Chief Land Registrar on that subject which I think you will agree with me is not only interesting but shows that great care has been taken at the Land Registry to make these new searches as little burdensome as possible. Therefore, I propose to read you extracts from the letter so that you may see what he says. After compliments he goes on in this way:

"I am anxious to reduce the work of solicitors when searching to a minimum. I have, therefore, constructed a new universal Alphabetical Index in which any entry in any of the registers will be noted. The entry in the Alphabetical Index will give: (1) The name address and description of the estate owner or other person against whom any entry in any of the registers is made. (2) The nature and class of the entry in the Register; i.e., whether a pending action, land charge, class C, or otherwise as the case may be. (3) The County and Parish, District or place in which the land affected is situated. It is therefore apparent that a search in the Alphabetical Index in itself will give a searcher sufficient information to enable him to make a requisition on the vendor, for the removal of the entry in the register, or an explanation of it to his satisfaction. And it will be borne in mind that this is the correct course for the purchaser to adopt. It is not his business to attend to the withdrawal or to trouble about the entry other than by enquiry to his vendor. It is for the vendor to attend to these matters. Consequently, solicitors, when searching, should confine themselves to a search in the Alphabetical Index."

Then he refers to what I said last time which seemed to suggest that the searches would be more difficult than they were before. I said I thought that they would be wider than they were before. He goes on:

"I hope I have made it clear that by means of the Alphabetical Index the Registry takes all this burden on itself, that a searcher will, in future, do exactly what he does to-day, and that, on an official search, he will not have to specify anything he does not specify to-day. After the Land Charges Act, 1925, comes into force, counsel should not instruct searches to be made in the registers but in the Alphabetical Index. I am trying my best to make this as widely known as I can."

I do think that that arrangement will be found to simplify the searches very much indeed. I note, particularly, with pleasure, that in the Alphabetical Index there will be a reference to the place where the property is. So that if you are searching against Mr. John Jones, you will find perhaps a large number of entries against Mr. John Jones, but you will find either on the official search or by looking at the Alphabetical Index, whether anything is entered against him in respect of any property in the place where your purchase is. I thought that would interest you and it shows, I think, that the searching will not be a very terrible matter.

One more point on the searches before I come to the subject of the lecture to-day. Since my last lecture I have been asked how far back ought you to search with regard to the new land charges like restrictive covenants and equitable charges.

There is no five years' limit and no re-registration. This difficulty has been suggested. It is a difficulty which will not arise for some twenty or thirty years, I think, but it is this: that where you get, we will say, a restrictive covenant entered on the register years hence when a person only investigates title back for thirty years according to the new limit, will he not find subsequently that there has been an entry made on the register of restrictive covenants many years before that? I think the answer is this: that you only get bound by restrictive covenants and other equitable interests if you have constructive notice. You do not get constructive notice, and it is made quite clear in the Act that you do not, of anything you would only find by searching further back than the root of title which you are entitled to by law. Therefore, I do not think, as I read the Act, that you would get constructive notice of or be bound in any way by restrictive covenants which you would only discover by going back beyond the root of title. The Act does not say that if you register a restrictive covenant and if it is registered it will bind a purchaser. It only says that if it is not registered it will not bind him. Therefore, I think we come back to this: that you only get bound by restrictive covenants on the doctrine of constructive notice. Therefore, in thirty or forty years' time you need not worry about restrictive covenants that have been registered before the period fixed by law for the commencement of your title.

Now, after those preliminary words on searches, I come to the main subject of this lecture, namely, the curtain. What is that mysterious curtain which we have seen a good deal written about, and perhaps heard more talked about? I want you to realize in the first instance that it is only an old friend—although the old friend becomes, perhaps, more important, and you meet him more frequently. There is a curtain already existing in a sense at the present day in many cases in conveyancing. For instance, supposing you have land settled by way of trust for sale. It may be settled by one deed conveying the land to trustees on trust for sale, and a separate document setting out the trusts of the proceeds of sale. There you have a curtain already. That curtain which exists in the case of a trust for sale is extended only to this extent that you will find many more cases of trusts for sale in the future than we have at present, because cases of difficulty (such as where there are infants or tenancies in common) are automatically put behind a trust for sale. So in that way the old curtain which exists in the case of a trust for sale is further extended and becomes more frequent.

Then, again, at the present day one has a kind of curtain in the case of settled land. One knows that if you are buying under a Settled Land Act title you have to look at the settlement and see who is tenant for life and who are the trustees. But you are not really concerned with all the limitations and trusts and powers arising under the settlement. They are in a sense put behind a curtain, but it is not a very complete one. It is, perhaps, rather transparent—for this reason, that under the present practice supposing you had a settlement and a disentailing deed and a resettlement, the settlement with its provisions or some of them is abstracted, and so is the resettlement, and both the original documents have to be read and compared with the abstract. So that you have before your eyes or you have an opportunity of seeing all the trusts and provisions of the settlement although when you have read them and looked at them you are not concerned with them.

One way in which the curtain will be made more effective in future is this: That when you come to selling land under a Settled Land Act title the trusts of the settlement will be in a distinct instrument. The idea is that the parts which a purchaser is concerned with—the appointment of the trustees and who is the tenant for life and the description of the property—those shall appear in one document which shall be the only document abstracted, and all the trusts and powers and provisions of the settlement shall be in a separate document as they are now frequently in a trust for sale, and shall be completely hidden behind the curtain so that you will not see them or be concerned with them. So that it is in that way you get the curtain.

Now, there will not be, as I think I explained before, a curtain in the case of an ordinary tenant in fee simple conveying his legal estate whether or not it is subject to legal mortgages. That will be done in the ordinary way and no curtain arises. Apart from that there is a provision, which I will deal with soon, under which you can put your land behind a curtain in certain cases. I do not think that will arise very often. But it makes the curtain provisions complete by enabling you when there is a difficulty, which is not met by the two kinds of curtain I have mentioned, to create a new one.

Perhaps the most important form of the curtain is the new form of settlements. It is that, perhaps, which is one of the most important things for the conveyancer to consider. Section 4 of the Settled Land Act says this with regard to settlements in future: "Every settlement of a legal estate in land *inter vivos* shall be effected by two deeds, namely, a vesting deed and a trust instrument." The vesting deed is to contain a description of the land, a conveyance of the land to some person—usually it will be the tenant for life under the settlement—in fee simple, or a declaration that it is already vested in him; thirdly, a statement that it is vested in that person on the trusts affecting the settled land; fourthly, the names of the trustees of the settlement; fifthly, any powers—I doubt whether there will be many in future—which are put in in addition to the Settled Land Act powers; and, sixthly, the name of the person, if any, who can appoint new trustees. That is called the principal vesting deed, and although it contains those six particulars none of them will be long, and you will only get in that the actual conveyance of the land (by its description) to an estate owner, and you will find who are the trustees of the settlement and the person who can appoint new trustees.

Now, the trust instrument will be a longer document. That in the first place will declare the trusts. Of course that is by far the longest portion of any settlement—the life interests and the entailed interests, and so on, and any portions and jointures and that kind of thing. It will appoint trustees and they will be the same trustees, of course, as appear in the vesting deed. It will set out the power, if any, to appoint new trustees and any additional powers beyond the Settled Land Act powers, and any stamp duty will be put upon the trust instrument. Well, now, the object of that change, as I have indicated is this, that only the vesting deed will be abstracted. The purchaser in the words of the Act will not be bound or entitled to call for the production of the trust instrument or any information concerning it or the stamp duty on it. And even if he has notice of anything outside he is bound and entitled, provided the vesting deed or the last vesting deed contains the required particulars, to assume first that the person in whom the land is stated to be vested is the tenant for life, and has the powers of a tenant for life, and, secondly that the persons stated to be the trustees are the trustees. So that dealing with the future where you get this system in full operation—where you have a Settled Land Act title with settlements and resettlements which at the present day mean generally rather long documents to deal with—you will get a series of vesting deeds containing those short statements, and the purchaser will be able to assume that the person named as tenant for life is the estate owner and can sell to him. He has only to see that the money is paid to the trustees named in the vesting deed and he can wash his hands of everything else which would otherwise appear in the settlement or be subsidiary to the settlement. In the immediate future it will not be quite so simple as that because you will, of course, be examining a title in much the same way as before up to the 1st January next, and there may be settlements already existing. Now, when that is so, the legal estate will on the 1st January next be vested in the tenant for life, and the proper vesting deed will be made and you will

see that vesting deed, of course, on investigating the title. But the purchaser will have to investigate to this extent. He must satisfy himself that the person in whom the land was vested by the first vesting deed, was the tenant for life in whom it ought to be vested, and that the trustees declared to be the trustees were the trustees at that time. That only means that at the transition period you cannot accept the first vesting deed as absolutely guaranteed. You examine the title up to that date in the ordinary way, and you ascertain the tenant for life and the trustees, and you have got to see that those are the people who appear as such in the first vesting deed.

There is rather a little catch there, because that was not so altogether in the 1922 Act. When the form of abstract which is given you by way of illustration in the sixth schedule of the Act of 1924 was being settled, the draughtsman apparently overlooked the fact that that slight change had been made, and there is a note in the abstract which says that after the Act comes into force the settlement being a settlement which was made before the Act will not be abstracted. I think that is clearly a slip because by the sections of the Act you have to abstract an existing settlement for the purposes I have mentioned. So just be warned that if you are working on the form of specimen abstract which is given you, that that note is incorrect. Unfortunately, I have copied the form in a certain book and it is wrong there too. If an Act of Parliament makes a mistake, one may perhaps be excused for following it; at any rate, it is not a very grave offence. Except for the first vesting deed, after the Act comes into force, you have not got to go behind the vesting deed or question it at all; you are bound to assume that the facts stated in it are correct and you may act upon them.

Now this question has been raised, and it is perhaps rather a difficult one: supposing that the person named in the vesting deed, when you are examining the title, has in fact ceased to be the tenant for life under the settlement? A difficulty arises there, because, with a view to forcing people to carry out this notion of the curtain wherever possible and confining the abstract to the legal estate, there is a provision in s. 13 of the Settled Land Act which says that where a person is entitled to have a vesting deed made in his favour, nobody can convey a legal estate until that vesting deed has been executed. So it is possible that this might happen: a tenant for life is a tenant for life only until some event happens; that event does happen and he, therefore, ceases to be the tenant for life; the next tenant for life under the settlement then becomes entitled to call for a vesting deed, and under that s. 13 it would look as if nobody could convey a legal estate until that vesting deed had been made. No doubt, in practice, as soon as that happens, before any transactions take place, the trustees will see that a proper vesting deed is made. But let us assume there is some doubt about it, or for some reason or other it is overlooked and no new vesting deed is made, and a purchaser looking at the old vesting deed sees that A B is the tenant for life. The Act in s. 110 says that he is bound and entitled to assume that A B is the tenant for life, and has the powers of the tenant for life. At first sight there seems, perhaps, a little conflict between those two sections. My own view for what it is worth is this, that the court, in construing this Act, will act upon the principle which the court has acted upon frequently before—for instance, in the case of *Davis and Kent's Contract*, where a point on the Settled Land Act arose, Lord Justice Cozens-Hardy said this: "I approach this Act with the knowledge that the intention of the Legislature was to make the Settled Land Act unassailable." Approaching it in that way they gave a generous interpretation to the rather strict words of the Act with a view to carrying out what was the obvious intention of the Act, and it seems to me, at any rate, there is a good prospect of the courts approaching this statute in the same way, knowing that the provisions of this Act were intended for the protection of a purchaser, where there is any little conflict between two sections. The one which says that a purchaser shall not be bound or concerned to inquire will, I should think, be held to give him ample protection, and more particularly because the side-note, so far as you may look at it, says: "For the protection of purchasers." That is a sort of thing which is not likely to happen very often, but I thought I would warn you about it, because it is a difficulty which has been suggested in the working of the Act. That is the way, then, in which settled land will be dealt with in an abstract of title, and that is the way in which the title will be very much shortened in the case of all settled land.

Now we come to another practical point with regard to this new method of settling land, that is, how you are to prepare settlements in future. Of course, there will be, no doubt, books of precedents showing you exactly how this ought to be done. But it may be that these books will not be ready quite as soon as you want them. Let us assume, then, that you are thrown on your own resources and you have to make a settlement very shortly after the commencement of the Act. I do not think you really will find much to fear in it. First of all, the Act itself gives you precedents which are very simple. You find, first of all, that you want to prepare your vesting deed and your trust instrument. You find the form, No. 2 in the first schedule to the Settled Land Act, of a vesting deed to be used in the case of a settlement made after the Act. You simply convey the land to the tenant for life if it is not already vested in him; declare that the land (describing it in the ordinary way by the parcels) is vested in that tenant for life in fee simple upon the trusts of a trust instrument of even date, etc. (referring to it); you name the trustees; you name any additional powers and state who has the power to appoint new trustees. If you use that form I do not think there ought to be any difficulty whatever in settling a vesting deed. When you come to the trust instrument there again the new form of trust instrument is given to you in Form No. 3 in the same schedule. You simply there recite the vesting deed and you thereby declare that the tenant for life agrees that he will hold the hereditaments comprised in the vesting deed on the following trusts. Then you set out the trusts in the ordinary way. The position will be very much altered in this way—whereas before you created by means of a use various legal estates—a legal estate in the tenant for life, remainders to trustees for legal terms of years and legal estates in tail—you will not do that in future in a trust instrument. All those will be equitable and there will be trusts for the tenant for life for his life, and trusts for the sons successively in tail male, or entailed interests, and even the portionists' terms will be trust terms. That at first sight is a little curious because the trust term does not give to the portionists the security they get now by giving them a legal term—giving them the legal estate. The operation of it you find set out in the Act and the form showing how you create these trust terms. It is this: if the trustees who are entitled to this trust term have to raise the money for the portions, they can call upon the estate owners in order to create the necessary term, and that, by the provisions of the Act, he will be bound to do. As soon as a legal term is created and vested in the trustees for the portionists' term they will have the same protection as they have under an ordinary strict settlement of land. I do not think you will really find much difficulty. Of course it is difficult to say until one has tried it (and I have not done so) but I do not think there ought to be much difficulty in settling a new settlement, vesting deed, and trust instrument, following the forms in the Act. Of course, before you will require to appoint the trustees of the settlement for the purposes of the Settled Land Act, and you will put in any additional powers that are required, and the power to appoint new trustees.

With regard to the additional powers I think you will probably find in practice that very little has to be done in that way. In recent years there have grown up certain almost common forms by which additional powers beyond those given by the Settled Land Act are set out in settlement.

They have become almost common form. The drafters of the new Settled Land Act have pretty well copied the common form additional clauses into the Act. So that, unless some ingenious conveyancers invent some new forms, there will probably be nothing to be put in there, for the moment at any rate. No doubt, in future, some further powers may be found necessary. But with regard to the substance of the trust instrument, the general trusts declared will, of course, be very similar to those before the Act; but in many respects I think we shall find that the document can be shortened and made very much simpler than it has up to now. You will find particularly in ss. 12 to 32 of the Trustee Act a large number of powers set out that the trustees are to have. Those sections are, to a certain extent, codifying sections, and they set out a good many powers that were already given to trustees before the Act. But conveyancers have found those powers in some respects not quite sufficient, and the common forms, as you know them, very often are amplified and additional powers are given which are not given by law. There, again, the draughtsman of the Act seems to have taken out from the precedent books, the common forms of additional powers to trustees, and put them all into the Act, so all the ordinary additional powers will in future be implied and need not be set out. For instance, if you go through one of the ordinary precedents of real property settlements in the books as they appear at the present day, you will find, of course, the settlements on a a person for life, and the estates tail and the trusts of the portionists' terms, and so on. Those will be very much the same with the difference I have mentioned. Then one finds this: settlement of copyhold, leasehold, and heirlooms to follow the trusts of the realty. If you look up the forms given to carry that out they are forms of very considerable length. Those will be quite unnecessary in future, or at any rate, they can be very short. Copyholds have ceased to exist, and leaseholds and heirlooms can be settled in exactly the same way as the freehold land without any of these long clauses. That is one point in which the new form of settlement may be very much shorter.

Then you come in the forms of the present day to extension of the Settled Land Act powers. For the reasons I have mentioned you are hardly likely to want those. None of them which I think now ordinarily appear in the precedents will be required.

Then one finds clauses in the precedents dealing with accumulations of income during minorities. That clause has been lifted bodily from the common form and put into the Act. You find that in s. 31 of the Trustee Act. Then there is the power to trustees to appoint attorneys on temporary absence abroad and so on. That is all put in and is based on the rather successful war legislation with regard to the appointment of attorneys, so that that clause can be omitted in future. Then there is the common form clause to employ agents. That is set out in the Act, and so will not be required.

There is a very important point here that I know you will want your attention called to. It is that in the ordinary common form of employing agents special power is usually put in for a solicitor trustee to charge. That is not in the Act, so that no doubt you will have to make a slight addition there. Then, again, there is a clause usually appearing in the precedents giving the trustees power to make valuations. That now appears in the Act.

Then we come to the indemnity clauses. A trustee is not to be liable for other persons, and only for his own wilful default. There has been a custom lately to make those indemnity clauses still wider; but the old indemnity clause in the Trustee Act is repeated in the new Act without any modifications. But, having regard to a decision in the *City Equitable Case*—a company case—you may remember there that a common form wilful default clause was held to mean what it said, and that the trustee—a director in that case—could only be made liable where that clause is contained where he does something which he actually knows is wrong. If that is the true construction, and it is the construction which the Court of Appeal have put upon it, it would appear that the ordinary common form given in the statute is really enough to protect trustees in respect of their indemnity, and that clause probably will be found sufficient in future. Then, with regard to the clauses for the maintenance of infants, you remember, the maintenance clauses in the Conveyancing Act did not cover every case, and particularly in the case of contingencies where the contingency was not attaining twenty-one, and advancement clauses had to be put in before. Now the maintenance clause is very wide indeed and covers every conceivable case, I think, and there are special advancement clauses put in by the Act; and, except that you want the ordinary clauses and power to appoint new trustees, a great deal of the ordinary common form matter which you put into settlements of the present day, I think you will find, can safely be omitted. At any rate, if you are drafting a settlement and you are working on the old forms, and have not got the new ones yet, with the assistance of the Act I suggest you should very carefully consider those ss. 12 to 32 of the Trustee Act before you put in a lot of what are at present common forms, because you will find that that is all done for you by the Act. That is the practical point of view with regard to new settlements—settlements made after the Act comes into force.

Now what is perhaps almost more important is this: what have we to do with regard to existing settlements when the Act comes into force? Of course, there a great change takes effect. Where you have got an ordinary settlement on a tenant for life and trustees having the powers of Settled Land Act trustees, then, on the 1st January next, in the ordinary case the legal estate in fee simple will vest in the tenant for life. It is automatic. You will not have to do anything to effect that. The tenant for life gets the legal estate in fee simple. There are some cases, of course, where there is not a tenant for life, strictly speaking, and there some other arrangements may have to be made. In the ordinary case a legal estate will vest direct in the tenant for life, and the settlement, although it deals with the legal estate and settles the land by legal limitations, becomes a trust instrument. It is put, as it were, behind the curtain; but in order to do that you have to erect the curtain. That is done by the execution of a vesting deed, and wherever you have settled land, early next year there will be required a vesting deed.

Now, the trustees are the people to execute that, and the Act says that the trustees may and if required by the tenant for life shall execute a vesting deed declaring that the legal estate shall vest or is vested in the tenant for life. In the ordinary case the legal estate will have already got to the tenant for life, and the function of the vesting deed will simply be to declare that it is vested in him. Now the vesting deed in that case will be the same in form or similar in form to the new vesting deed; that is to say, it will contain a description of the property, though that may be done by reference to the previous descriptions; and it will declare that the legal estate is vested in the tenant for life, that he holds it on the trusts affecting the settled land, and it will give the name of the trustees and the names of the persons who can appoint new trustees. There again, if the books are not ready and you have to work on the Act, you will find a form set out in the schedule. It is FORM I in the schedule. It is very much the same as in the case of a new settlement. But there is this difference, that you will have to consider how much you ought to recite of the existing settlement. It seems to me, and I think this is the view of practical conveyancers and in accordance with the form given in the Act, that you ought to recite sufficient of the existing settlement to show that the tenant for life is the tenant for life, and that the trustees are the trustees for the purposes of the Settled Land Act—just enough for that and no more. Supposing, for instance, that after the settlement there have been dealings which probably you would have abstracted

in the ordinary way—charges on a life estate; a disentailing deed; mortgages on the reversion and things of that kind—none of those ought to go into this vesting deed, because the whole point of the vesting deed is to keep all that kind of thing off the title. So you would recite just enough of the original settlement to show how it is that the tenant for life comes there, and the trustees, and then you will just carry out the form in the way I have mentioned. The importance of doing that and doing it at once is that the tenant for life will not be in a position to create any legal estate of any kind until that has been done. So, before he can execute any of his powers by way of selling the land, and so on, it will be necessary to get that vesting deed done. I should think a good many of you will be very busy shortly perhaps settling these vesting deeds, and I do not really think you ought to find a great deal of trouble about it. One point with regard to that is this: there is no stamp duty on a vesting deed. There are two documents for the settlement, the vesting deed and the trust instrument. The trust instrument has the stamp duty on it. The purchaser is not concerned with that and it will not appear. The vesting deed, whether it is a new one after the Act or giving effect to a settlement already existing, will not require stamp duty at all.

The chief exception to what I have told you is this: Where at the commencement of the Act the land is not vested in a person who is tenant for life in the ordinary way, but in personal representatives—where there has been a settlement by means of a will and the legal estate is still vested in personal representatives—there, there is no automatic divesting of the legal estate. They will hold it until they are required by the tenant for life to convey the legal estate to him. So that, when required, they will execute a vesting deed or a vesting assent which has the same effect and vest the legal estate in the tenant for life. Therefore, if you find that you have clients who have land settled by means of a will, the legal estate being in the personal representatives, you will bear in mind that they are the people who will make this vesting deed or vesting assent—a form of which you will find in Form V of the First Schedule. There, again, there is no stamp duty on a vesting assent any more than there is on a vesting deed. Now, that is the way, by means of a settlement, that one branch of the curtain provisions will in future work out.

Now we come to trusts for sale which is another branch, of course, of the curtain provisions. There the curtain is somewhat extended and there is a somewhat clearer protection to purchasers than there was before. But I do not think that this protection amounts to very much because, as I understand the law at present, where trustees hold land on trust for sale and the persons are only interested in the proceeds of sale there is already a pretty effective curtain. The purchaser is not concerned to enquire into what happens to the proceeds of sale or what the interests of the parties are in it. The Act only makes it clearer by saying specifically in Section 27 of the Law of Property Act that a purchaser is not concerned with the trusts of the proceeds of sale or with the rents and profits, until sale, whether or not those trusts or interests appear in the same instrument as that by which the trust for sale is created. There is this change, however, which is intended more for the protection of the beneficiaries perhaps than the purchasers, that notwithstanding anything in the deed, any purchase money arising under a sale by the trustees must be paid to at least two trustees or a trust corporation. Now that trust corporation is rather an interesting person. It is defined in this way: "A trust corporation is either the Public Trustee or any corporation appointed by the Court to be the trustee in any particular instance or "—and this is the big branch—"any corporation entitled to act as custodian trustee under the rules under the Public Trustee Act, 1906." So one has to turn to those rules and see what that means. By the Public Trustee Rules of 1912, rule 30, there is a pretty wide rule and reading it in its widest terms it includes this: "any body corporate empowered by the Memorandum of Association defining its powers to undertake trusts." That is extraordinarily wide as things now stand. Mr. John Jones can form a limited company of which he is the sole managing director and holding one share and his wife another. He calls himself "John Jones, Limited," and takes power by his Memorandum of Association to carry out trusts He becomes a trust corporation and there need not be two trustees in that case. No doubt that is under consideration—in fact I am pretty sure it is—and the whole question of how you are going to define a trust corporation is being very carefully considered. I do not think it has been settled yet. There are a good many things, of course, to be considered. One hopes that it will not be too stringent; at the same time it must not be as lax as that. It is being considered also, I believe, with regard to how far foreign corporations can act as this class of trustee. So that, for the moment, all we can say about the trust corporation is that something is being done to define what a trust corporation is.

Now with regard to trusts for sale, in every trust for sale in the future there is to be implied a power to postpone sale unless the contrary intention appears. That, no doubt, will make the trust for sale rather shorter because in the ordinary way in creating a trust for sale one has to specify that they shall have power to postpone sale without being responsible for loss and that kind of thing. That is all now set out in the Act. That applies whether the trust for sale was created before or after the Act. So that when you are talking now about people holding on trust for sale you need never enact expressly that they have power to postpone sale, because that will be implied. Those are the two main branches of the curtain provisions—settlement and trust for sale.

Now we come to a third case, that is a case where the vendor has power to create a curtain where there was not one before. I doubt whether that will arise very often in practice. It is a little difficult to see many cases where it is at all likely to be wanted. I think the idea is this, that wherever possible a title shall be made by reference to the legal estate only. That can be done, of course, when you have a tenant in fee simple selling in the ordinary way. It can be done under the new method of settlement and it can be done under the trust for sale. The only case where you may get difficulties making it essential for persons who have equitable interests to concur in the sale and making it necessary for the purchaser to investigate those equitable interests, would be cases where a person holds a legal estate in fee simple, but there are some outstanding equitable interests not arising under a settlement. We shall see that the definition of a settlement is so much extended that where you find outstanding equitable interests affecting the fee simple, in nearly every case you will find that the land is settled land. So that the tenant in fee simple becomes a person having the powers of a tenant for life under the Settled Land Acts and will have to make his title not as tenant in fee simple with the concurrence of persons having these equitable interests but will have to sell as tenant for life under the Settled Land Acts, the money being paid to trustees. That I hope to deal with more in detail when we come to the Settled Land Acts. But there may conceivably be cases where a person holds the estate in fee simple but there are some equitable encumbrances outstanding on the property not created by a settlement (that is to say not created voluntarily or under a marriage settlement or under a deed of family arrangement) where you have equitable interests created for value. We will say a man has bought land in consideration of charging the land with life annuities to various people. Those life annuities, though charged on the land, will be equitable interests and there there might be a case of a tenant in fee simple who has the legal estate, but who can only make a title by getting a large number of persons to concur who have equitable encumbrances on the property. I have come across a case where a tenant

for life had paid off a lot of charges on the land and so had got by reason of that payment off an equitable charge on the fee, though he was only tenant for life; but on his death his executors become entitled to a large number of equitable encumbrances on the land not arising under a settlement but arising for value, because he has paid off those charges. In that case the opportunity is given to the vendor to say: "I will not make a title by abstracting all these equitable encumbrances and getting the concurrence of the people who are now entitled to them. What I will do is I will create a curtain; I will create a trust for sale, or I will create a settlement." He can do that in one of two ways. Considering how seldom this is likely to arise, you may perhaps think that unnecessary space has been taken up in the Act by giving two ways of carrying out this alternative scheme. He can either convey his land to trustees for sale, who must be two trustees appointed or approved by the court, or a trust corporation. That will probably be the simplest thing to do. If he has conveyed the land to trustees for sale in that way, he will then be able to over-reach those equitable interests that I have been talking about and they will become attached to the proceeds of sale. The Act is complicated there and not at all easy to work out, because there are exceptions and exceptions to those exceptions until one's brain begins to reel. But I do not think it is worth while trying to work out exactly how far a person doing that can over-reach these various equitable interests of different kinds. If you will take it from me what in substance he will be able to do is to over-reach the class of equitable charge or encumbrance which I have been mentioning—things like annuities and limited owners' charges and general equitable charges. He will be able to over-reach those in this sense, that when his trustees sell the fee simple to a purchaser, the purchaser will get the legal estate and will not be concerned with those equitable encumbrances. Those will attach to the proceeds of sale and the purchaser will not be concerned with them. But bear in mind you have got to consider it pretty carefully if you are going to use that section, because there are a good many things which will not be over-ridden—such as charges protected by the deposit of title deeds, and some things of that kind. But I think it is almost impossible to try to memorize the effect of a sale in that case. For practical purposes it would be quite sufficient if one bears in mind this, that if you have got a man who is tenant in fee simple and there are equitable encumbrances which create a difficulty in making a title, you will then turn to s. 2 of the Law of Property Act and see how he can get over that by creating a trust for sale. Then he has an alternative method, which is that he can create a settlement. That is dealt with in s. 21 of the Settled Land Act. Instead of creating a trust for sale, he declares by deed that the legal estate is vested in him on trust to give effect to all equitable interests. That must be executed in the same kind of way, either by two persons appointed by the court or a trust corporation who will execute it as trustees of a settlement. Then that deed becomes a vesting deed, and he can sell as tenant for life under that vesting deed. That is an alternative way of carrying out that same idea. But from a practical point of view I do not think one need worry about that. You need only bear in mind that if you do get a difficulty in title—a tenant in fee simple and outstanding equitable charges—the first thing to consider is this: under the new law do those equitable charges arise under what is now a settlement? You have to look up the definition of settlement and you will find, if there are any outstanding equitable charges, that he very likely is tenant for life and that there is a settlement. If you find that that is not so, just bear in mind that he can by one or other of these means create a curtain to protect himself by making a title without the concurrence of all those people.

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The Law Society.

LAW OF PROPERTY ACTS LECTURE

(*First of the Series*),

By Sir BENJAMIN CHERRY,

On Wednesday, 4th November, 1925.

[*Verbatim Report.*]

Preliminary.

Mr. President and Gentlemen:—I consider it a great honour that I should be selected by the Council of the Law Society to give these lectures in your hall.

I should have been, I confess, somewhat disappointed had someone else been selected, for it has been one of my pleasures that I have, since the year 1896, been actively concerned in doing my best to assist your Society in connexion with Parliamentary matters. First to oppose the Bill for the Land Transfer Act, 1897; and subsequently in connexion with the preparation of a large number of measures, most of which are now incorporated in the new legislation which we are to consider together in these lectures.

I do not think that the general public are fully aware of the great services which the Law Society have rendered in connexion with legislation relating to land.

There is an absurd idea that solicitors, as a class, are opposed to measures designed for the benefit of the public. Nothing is further from being the fact.

For many years past your Society have been prominent in initiating legislation on broad lines, and it is well known that, but for the services of this Society the new Acts would have had very little chance of becoming law.

In this connexion I cannot help referring to my friends the late Sir Walter Trower, and to Sir Charles Longmore, who brought their great influence to bear on all matters of policy connected with this legislation.

Considerable consternation has been caused by the length of the Statutes which you are called upon to digest; but you may console yourselves with the knowledge that something very much worse might have been passed, and that a large part of that legislation is already in force, thus you are, no doubt, fully familiar with its effect.

I may further console you by stating that when you obtain your precedent books, adapted for use under the new practice, you will be surprised to find how the old principles still govern your daily practice; you will find, indeed, that the knowledge you have already acquired will stand you in good stead in regard to the new practice, for in nearly every case it is founded on principles with which you are entirely familiar.

In lectures of this nature it is, of course, impossible to go fully into detail, indeed I do not propose to cite sections or cases more than is absolutely necessary, nor indeed to travel over preliminary or elementary matter, which you will find excellently stated in a little book entitled "A Guide to the New Acts," which has been published by the Editors of "*Law Notes.*"

I strongly recommend you all, if you have not already done so, to read the introduction in that little book; I hardly think it will be worth your while to do more than this, for the treatment of the details of the new Acts will probably be more amply dealt with by practice books.

Then, again, I hope that you have read the speech of my friend, Sir Leslie Scott, K.C., formerly Solicitor-General, which he made in the House of Commons when the Bill for Lord Birkenhead's Act was read a second time; this speech, known as "the Seven Lamps," is now republished, with notes, by Mr. Benas, to show what alterations have been made in regard to the subjects touched on by Sir Leslie Scott.

There are, I understand, a host of lecturers who are able and willing to teach us the elements of the new law.

I wish, therefore, as far as possible, in these lectures, to make no attempt to furnish a logical explanation of the Acts, but to confine myself to matters of practice with which you will have to deal shortly. In this connexion I have no doubt that many of you have already encountered, in your reading, several practical points on which you would like elucidation. For this purpose it would be convenient if those members who desire to ask questions after each lecture would write out the questions on a slip of paper with their name at the top, and let me have them in the way mentioned by our Chairman. I have no doubt that your secretary, Mr. Cook, will kindly arrange to collect the posers.

I do not suggest this with a view to burking discussion, but I think it will save your valuable time. So far as I am able, I hope to be able to answer the questions, but some of them may be entirely new to me and I may have to ask your indulgence to allow me to answer them in a subsequent lecture.

Mr. Justice Romer's Committee.

Lest you should think that your branch of the profession is solely responsible for Lord Birkenhead's Acts, I must pause a moment to pay a humble tribute to the splendid work done by Mr. Justice Romer and his committee in relation to the Amending and Consolidating Acts. His committee-men were :—

Sir Arthur Underhill; Mr. Ed. H. Benn; Mr. A. E. Russell, all conveyancing counsel to the court; Mr. Alfred Topham, K.C., who is now giving excellent lectures to managing clerks; Sir Frederick Liddell, the first Parliamentary draftsman, who indeed is second to none; while I was there to run the gauntlet.

You would be surprised, in these circumstances, if the work of the committee was not first class. But you must not expect impossibilities even of such a committee. In a subject so vast, there are bound to be mistakes which will occupy the attention of the Legislature at some future date.

I need not touch on history to-day, for the lectures of Mr. Topham, published in THE SOLICITORS' JOURNAL, save me from that.

General Objects.

But may I remind you of what we set out to do? This was :—

(1) To assimilate the law of real and personal property, adopting the best features belonging to either class of property.

(2) To approximate the title of land, so far as the subject-matter permitted, to the title under which stocks and shares are held, but without the aid of a register.

This involved the keeping of settlements and trusts off the title. For, unlike our Australian brethren, the idea of abolishing settlements of land did not appeal to us if the same result, from the point of view of public interest, could be achieved in another way.

It also involved the giving of very wide powers to persons in fiduciary positions so that it should not be possible to allege, with any justification, that the existence of settlements or trusts were in any way responsible for holding up any reasonable transaction.

(3) Generally to improve and simplify the law and practice.

This may raise a smile in view of the legislative repast you have before you, but when you come to study your precedent books you will realise that it has been done.

Multiplicity of tenures.

One of the great stumbling blocks to all land law reform has been the multiplicity and complexity of our tenures. Until copyhold and customary tenures were abolished nothing in the nature of a comprehensive simplification was feasible.

There is so much to be condensed into six lectures that I know you will forgive me if I appear to hurry you through the subject-matter. Fortunately, these lectures are to be published in the Law Papers, hence, if you miss a point, you will be able to recover it later.

I cannot promise you a rollicking time, but I will do my best not to bore you to distraction.

I can now turn to the subject-matter referred to in the syllabus to be dealt with in this lecture.

Abolition of copyholds.

The first point you have to get firmly fixed in your minds is that on and after the 1st January, 1926, there will not be a parcel of copyhold land left in this country, for the Act of 1922 (Lord Birkenhead's Act), as amended by the Act of 1924, *ipso facto* enfranchises the land, leaving only the manorial incidents, having a money value, to be dealt with afterwards by means of a compensation agreement or by notice to determine the compensation. But only Customary Courts are abolished, Courts Baron and Courts Leet remain; and stewards must continue to collect customary payments till the incidents are extinguished.

Alteration in the lord's title.

You will please bear in mind that a lord of a manor on the 1st January next will not necessarily be the same person who was lord of the manor on the 31st December of this year.

The reason is that under the vesting provisions contained in Pt. II of the 1st Schedule to the Law of Property Act, 1925, and in the 2nd Schedule to the Settled Land Act, 1925, the manor, which is, of course, treated as land for the purposes of the Acts, will vest in the person who ought to have it under the new law.

For instance, if there is a tenant for life of full age the whole fee simple in the manor will vest in him; he will not, however, be able to deal with it or enter into a compensation agreement until a vesting deed has been executed by the Settled Land Act Trustees.

Again, if the manor is held on trust for sale it will vest in the trustees for sale; also if the persons entitled are the personal representatives of a deceased person it will vest in them.

Outstanding legal estates.

In every case outstanding legal estates will thus be got in but not so as to complete mere contracts.

This should be of great assistance to you in carrying through compensation agreements, for it will be by compensation agreements that most of the manorial incidents will be extinguished.

Mortgagors and mortgagees.

You will no doubt have already ascertained that where a manor or land is mortgaged, the mortgagor will take the legal estate in fee simple, the mortgagees being given terms of 3,000 years without impeachment of waste; second and subsequent mortgagees taking terms one day longer than the term vested in the mortgagee above them.

Persons to contract as respects the manor.

As the persons to enter into compensation agreements will be the same persons who would make a title to the manor on a sale, it follows that mortgagees whose power of sale has arisen can, generally speaking, enter into compensation agreements, and, of course, they will be able to do so where the right of redemption is barred whether by foreclosure or under the Limitation Acts. But mortgagees will not be the usual parties to compensation agreements, save to join with the owner of what I will call, though it will now be a little incorrect, the equity of redemption. As a general rule a mortgagee will not enter into a compensation agreement under his power of sale save where he is selling the manor or the land under his power of sale; he will then do so with the concurrence of his purchaser.

Vesting of enfranchised land.

Now these same principles to which I have referred in connexion with the manor are equally applicable to the

enfranchised land. This will vest in the person who will have to make a title to it under the new law. He will be the person, therefore, to enter into the compensation agreement as respects the land.

I wish to warn you against being confused on account of the expression "tenant" being used in the Act of 1922 as indicating the person to enter into the compensation agreement in regard to land; if you will refer to the definition of the "tenant" in that Act you will find that it may have no relation whatever to the person who happens to be the tenant on the rolls.

For instance, if trustees of a settlement are the admitted tenants, the land will not vest in them but in the tenant for life of full age or the statutory owners under the settlement. Again, a corporation may be the true owner; if so, the land will vest in it.

It may, of course, be that the true owner of the land happens to have been admitted, in which case the court rolls will be material, but, as we all know, in a large number of cases no admission has taken place for a very great number of years, hence it was essential to disregard the title on the court rolls and to vest the land in the person who can make title to it.

Position until extinguishment.

Now, until a compensation agreement has been made or notice to ascertain the compensation to be paid for the extinguishment has been served, the land remains affected by the manorial incidents having a money value; the position is very similar to that obtaining when the promoters of an undertaking acquire land under compulsory powers and have to settle afterwards with the lord for the amount of the compensation to be paid to him.

Endorsement of conveyances.

In order to protect the interests of the lord and of the steward pending the extinguishment of the incidents and to enable them to get in touch with the persons who claim the land, it has been enacted. First, that all conveyances of the land, with the exception of leases for a year or for less than a year, but including assents by personal representatives which in fact operate as conveyances, must be produced to the steward of the manor within six months from date, and secondly, that all the fines and fees which would have been payable, had the transaction been carried out by a customary assurance, must then be paid, together with all arrears.

If default is made in the production of the conveyance to the steward within the six months, or within such further time as the court may in special circumstances allow, the conveyance will not operate to pass the legal estate. This is a very severe penalty, for it means that the purchaser will get a bad title, having regard to s. 42 of the Law of Property Act, 1925. Thus I think you will agree that the interim rights of the lord and the steward have been properly protected.

It is true that the lord has lost his right to seize *quo usque* on the death of a tenant on the rolls, and that wills have no longer to be brought to the steward; still, the personal representatives, in whom after 1925 the land will vest, can only deal with it, by leases from year to year, without coming to the steward; then when they make an assent in favour of the persons interested, whether beneficially or in a fiduciary capacity, that assent will have to be brought to the steward; so that on the whole the security is really rather better than under the existing law.

Compulsory extinguishment.

If one of the parties decides to serve a notice this brings into force the compulsory provisions, and the matter will be carried through under the Manorial Incidents (Extinguishment) Rules, 1925, unless, before the compensation is fixed, they change their minds and enter into a compensation agreement.

Copyholds for life.

And now let me deal with a few special cases. As regards copyholds for life without a right of perpetual renewal, these are converted into terms of ninety years determinable by notice on either side on the first quarter-day which occurs after the death of the *cestui que vie*.

In this case no compensation agreement or notice is required. The owner of the land becomes a leaseholder subject to rents and payments corresponding to those he would have been liable to pay had the land remained copyhold. These rents and payments no longer remain manorial incidents. They will not be extinguished.

Copyholds for years.

Then, again, under the same section, namely, s. 133, copyholds for years not renewable are converted into leaseholds for years subject to the same rents, etc., as have hitherto been paid; and no compensation agreement is required.

Renewable copyholds.

On the other hand, perpetually renewable copyholds are treated on the same footing as copyholds of inheritance, that is to say, the owner of the land will acquire the fee simple subject to the manorial incidents which are saved, and a compensation agreement will accordingly be necessary just as if he had been entitled to the customary estate in fee simple.

Copyholders' leases.

There is one point however to note; where the copyholder entitled to perpetually renewable copyholds has himself created a perpetually renewable lease derived out of his customary estate, that lease is treated as an underlease for the purposes of the 15th Sched. to the Act of 1922, and accordingly such underlessee will take a term of 2,000 years in accordance with the provisions of that schedule in like manner as if his lease had been granted to him by an owner of the fee simple.

Derivative legal estates.

There are a few other special cases covered by s. 142 of the Act of 1922; for instance where legal estates derived out of the fee simple have been created.

Legal Estates.

This brings me up to the question as to what are legal estates? No doubt you have already discovered that for practical purposes there will be only two after 1925, namely, the fee simple in possession and a term of years absolute.

But at the same time there are other interests which are treated as legal estates. For instance, perpetual rent-charges or rent-charges held for a term of years absolute, and easements held for similar interests.

Separate agreements.

Now in these cases, which will in practice be mainly confined to perpetual rent-charges and long terms of years, the owner of the fee simple will enter into a separate compensation agreement from that which the owner of the rent-charge or the owner of the term will enter into.

Compensation, how discharged.

Where such an interest derived out of the fee simple is dealt with the compensation must be paid in a lump sum.

You will have noticed that in addition to this case the compensation must be paid in a lump sum in the following cases:—

(1) Where the land affected is settled land, and there is sufficient capital money out of which it can be paid;

(2) Where the land is held on trust for sale, and there is sufficient personal estate held with it; and

(3) Where the compensation does not exceed £20.

In other cases, unless the parties otherwise agree, the compensation will be payable by a terminable rent-charge payable by twenty equal annual instalments of capital with

interest at 5½ per cent. on the amount of the compensation from time to time left unpaid.

You will observe that as time goes on the compensation rent-charge will get smaller and smaller, as there will be less capital on which interest is to be charged.

The whole of the compensation must necessarily be paid at the end of twenty years from the date of the extinguishment.

Again, the owner of the land can grant rights to the lord which will be taken in or towards satisfaction of the compensation.

Date of extinguishment.

The date of the extinguishment is either the date of the compensation agreement or the date when the notice to determine the compensation is served.

Another case arises where the incidents are automatically extinguished, namely, where no notice is served and no compensation agreement is made before the expiration of ten years from the 1st January, 1926, which is the period allowed for the incidents to be extinguished by agreement.

It is true that the Minister of Agriculture and Fisheries may extend that period, but I doubt if such an order will be made for some considerable period, and then only in special cases where it appears to be impossible to complete the business before the end of the ten years.

Restriction on service of notices.

You will observe that the lord is not entitled to serve a notice to ascertain the compensation for five years after the 1st January next.

The object of that provision is to give the owners of the land, some of whom, as we know, are in quite poor circumstances, time to collect the money which will be payable when the compensation agreement is effected. With this object in view, the stewards should circularise the owners of the land as to the effect of the Acts.

Now for some practical points.

Compensation agreements.

First I would suggest that it will be generally worth while for the stewards of manors to have a form of compensation agreement made which is applicable to the title of the lord.

If copies of these are furnished to applicants it will facilitate business.

You will find precedents prepared on these lines in the new "Prideaux."

It should be considered in each case whether the lord should give up his mining and sporting rights, or whether he should bargain for a grant by the landowner of his rights in the minerals.

Secondly, it will generally be worth while to have a statutory declaration made as to the lord's title, for the protection of the landowner, not as a document of title. Copies of this can then be furnished to the owner of the land subject to his paying a proper fee. This appears to me more likely to be satisfactory to all parties than to leave a statutory declaration to be prepared only in those cases where the owner of the land calls for it.

Save where the compensation is to be satisfied by a rent-charge or by the grant of rights, the lord will not usually require a statutory declaration in regard to the owner's title.

My next piece of advice, which may be unnecessary, is that the profession should, as a whole, endeavour to carry through this matter, and it is a large one, by means of compensation agreements, rather than by serving notice to ascertain the amount of the compensation.

Whether lord shall serve a notice.

In the first place, it will seldom be in the interest of the lord to serve a notice because the person who serves the notice will, speaking generally, be saddled with the costs.

I can imagine cases where it might be worth his while to serve a notice; for instance, if land is subject to a small quit rent, which is seldom collected, it is more in the interest of the lord that it should be got rid of, than of the owner of the land, and you will observe that the Act of 1922 deals not only with manorial incidents affecting copyholds but manorial incidents affecting land generally.

Then, again, if the lord has made a reasonable offer to the owner of the land, and the owner refuses it, the lord may be advised to serve a notice, because, in that case, the Minister has power to throw the costs on the person who refuses the offer.

Costs.

Independently of the costs being thrown on the person who serves the notice, the costs as between the parties are, for purposes of negotiation, governed by the provisions in para. (*d*) of s. 140 of the Act of 1922, which applies where the extinguishment takes effect by reason of the expiration of the ten years' period.

Lords and stewards will bear this in mind when negotiating the costs of compensation agreements, for if they threaten to leave the matter alone this paragraph will apply. It is so important that you will excuse me if I read it. It runs as follows:—

> "The costs and expenses of determining the compensation in any case to which this section applies shall, notwithstanding anything contained in this Part of this Act and in default of agreement, be borne by the tenant, unless the Minister considers that the conduct of the lord has been unreasonable or that special considerations apply, in either of which cases the Minister may determine by whom and in what proportions, if any, the costs and expenses are to be borne, and in so determining he shall have regard to what would be just, according as nearly as may be to the advantages derived from the extinguishment by the lord and tenant, respectively, or by either of them."

Incidents should be extinguished within the ten years.

The principle adopted under which the Minister of Agriculture and Fisheries is to have power to throw the costs on a person who has acted unreasonably, is, I submit, entirely sound.

Do not let me be misunderstood; I do not recommend that these incidents should be allowed to remain until the expiration of the ten years, that is really not in the interests of either party; so far as the lord is concerned, he will, under para. (*a*) of the same section, not be allowed anything in respect of any rent, fine, relief, heriot or fee which would otherwise have accrued due or become payable between the expiration, of the ten years and the date of the application to the Minister. Therefore, from his point of view, it is expedient to negotiate compensation agreements. From the point of view of the landowner, in about 99 per cent. of cases it will be in his interest to get rid of the manorial incidents, and that as soon as possible.

There are further inducements to carry through the matter within the ten years, for instance, stamp duty is remitted together with any costs properly incurred at the Ministry of Agriculture, provided the extinguishment is effected within that period.

Seeing that persons who, on a sale, would be able to dispose of the land or of the manor will be able to enter into compensation agreements, and having regard to the new facilities for making title conferred by the other Acts, I imagine that it will seldom be necessary to apply to the Minister for assistance or to serve notice to determine the amount of compensation. Still, if the profession cannot solve a problem, it is satisfactory to know that an application can be made to the Minister.

One word of warning: I understand that, of the present compulsory enfranchisements, 40 per cent. are attributable to the fact that the tenant is not satisfied with the terms offered by the lord. This ought not to happen after 1925, for the

scale is now made binding at law, subject only to variations authorised by the Minister.

Ascertainment of compensation.

As regards the method of ascertaining the amount of compensation in each case, this is a matter with which you have all probably had previous experience.

General principle.

The general principle governing the amount of compensation will be found in s. 139 (1) (ii).

No compensation is to be paid for forfeitures, except as provided by the 13th Sched., Pt. II, but this, as you will see, is a wide exception.

Nor for any advantage accruing to the landowner by reason of the extinguishment unless the extinguishment giving the advantage is a loss to the lord as well as an advantage to the landowner, nor in excess of such loss.

This is another way of saying that compensation is only to be paid in respect of incidents having a money value.

Forfeitures.

Paragraph 13 (as amended) of Pt. II of the 13th Sched. lays down the new rules respecting compensation for forfeitures and other incidents not expressly provided for.

Generally it allows 20 per cent. of the annual value of the fee simple in possession as ascertained under that schedule.

If the fee simple is subject to a lease binding on the lord, or the customary interest was less than a fee simple then it will be 20 per cent. of the annual value of such interest to be ascertained, unless the parties agree, as the Minister determines.

Provided that if by custom there is an *unrestricted* right of demising or otherwise dealing with the land without licence, then no compensation is payable under the paragraph in question unless the Minister otherwise determines.

The fact that a lessee has to be admitted does not take the case out of the proviso, for most customary dealings are followed by admission.

The object of the proviso is to enable the Minister to fix a scale (s. 139 (1) (viii)) which will be fair to the parties.

Subject to the foregoing remarks the principles for ascertaining the compensation adopted by the Act of 1922 are on all fours with those adopted under previous orders made pursuant to the Copyhold Act of 1894; there have been a few alterations, but none to which I need call your attention to-day. The matter of working out the sum is perhaps a trifle complicated, but you will find in Vol. 1 of "Wolstenholme" examples for working out the amount of compensation in different cases.

Solicitors' remuneration.

In those examples it has not been possible to do more than estimate the costs. The reason is that the Solicitors Remuneration Order applicable to the case had not been issued before that volume went to press. I think you will agree with me that the proper course was taken in leaving the committee dealing with solicitors' remuneration to issue an order to cover these matters.

Compensation to stewards.

You will notice that, inasmuch as the remunerative duties of a steward will be practically at an end when all the manorial incidents have been extinguished, the Act very properly provides that some compensation should be given to a steward appointed before the 29th June, 1922, being the date of the passing of the Act of that year. There will, however, be a good deal to do, especially in freehold manors, in the way of summoning courts baron, courts leet, and hundred courts, and until the incidents are extinguished in collecting customary payments, when assurances are brought to the steward for endorsement.

There are a few matters in regard to title, affected by the 12th Sched. to the Act of 1922, to which I ought to call your attention.

Mortgage terms.

As a general rule mortgagees will take only terms of years where the mortgage, made before 1926, has been in the form of a legal mortgage; that is to say, where some estate or interest is expressed to have been conveyed or demised. But in the case of copyholds, where the mortgage has been taken by a mere covenant to surrender, or a conditional surrender, or a conditional surrender followed by admission, in each case the mortgagee will take a term of 3,000 years. You will, of course, distinguish between the case of a mortgagee and that of a person interested; for instance, under a settlement, to a mere charge; he is not for this purpose treated as a mortgagee.

Again, a mortgagee by deposit is sufficiently protected by the documents of title left with him. His mortgage is not converted into a legal mortgage.

Even if, under the memorandum of deposit, he has a right to call for a legal mortgage, he will not take a legal estate under the Act. This is made clear by para. 7 of Pt. II of the 1st Sched. to the Act of 1925.

Limitation Acts.

Then again, if a person has acquired a copyhold interest under the Limitation Acts, he will acquire a legal estate corresponding to that interest in the enfranchised land.

Copyhold tenure has not been our only bugbear; perpetually renewable leases are indefensible in an enlightened age. The tenure is insecure and exceedingly expensive. Accordingly it is abolished.

Perpetually renewable leases.

I can now turn, for a few moments, to the consideration of the 15th Sched. to the Act of 1922 relating to the conversion of perpetually renewable leases into long terms.

That schedule, you will observe, applies not only to perpetually renewable leases but to perpetually renewable underleases, and I have already called your attention to the fact that perpetually renewable copyholds are treated as if the owner were entitled to a customary estate of inheritance, so that this case does not come within the 15th Sched., whereas a lessee from such a copyholder is within that schedule.

Production of leases, etc.

There are several important points to note, and the first is that a person claiming to be entitled to a 2,000 years' term created by that schedule must, within one year from the 1st January next, produce his lease or underlease, or sufficient evidence of it, with the necessary particulars, to the lessor or his solicitor to show that the right of renewal is subsisting.

The agent will then, if the right of renewal is proved, and subject to the payment of his costs, endorse notice of that fact on the lease or underlease or other document produced as evidence and may sign such endorsement on behalf of the lessor in favour of a purchaser that will show that a right of renewal was subsisting. But when the additional rent (operating as a pre-payment of the fines) is fixed, the endorsements in relation thereto must be signed by the parties in person.

A covenant to produce before 1927 is implied in the lease and the power of entry, if any, in the lease will extend to a breach of it. Both endorsements should be made before 1927; if they can be made at the same time that will be the most convenient course.

Power to determine.

Then you will notice that power is given to a lessee, by notice, to determine the lease if it is not worth his while to continue it at an increased rent, at the times at which it would have expired had there been no renewal.

Covenant to register.

A further covenant is also implied that the lessee is to register every assignment or devolution of his term, including probates and letters of administration, with his lessor or

the solicitor of the lessor within six months from the date of the assignment or devolution and to pay a fee of a guinea for the registration. This covenant takes the place of any express covenant to register assignments with the lessor or his solicitor.

The object of this, of course, is to enable the lessor to keep in touch with his lessee.

Liability for rent, etc.

The original lessee will not be liable for rent or for breaches of covenant for all time; that would have been unfair; but he is placed in the same position as if he were an assignee, that is to say, he will be liable for the rent and for breaches of covenants during the period of his ownership and of course his estate will be liable so long as the term remains vested in his representatives.

Effect of covenant for perpetual renewal.

I wish you to observe, too, that a grant of a leasehold interest with a covenant for perpetual renewal made after 1925 will operate as a demise for a term of 2,000 years free from any obligation for renewal or for the payment of any fines, etc., for renewal. This I think you will agree, is sufficient to deter anyone from purporting to grant a perpetually renewable lease after 1925.

Existing contracts.

Then as regards existing contracts to grant perpetually renewable leases, these will operate as contracts to grant a lease for a term of 2,000 years but the amount of the rent will in that case be adjusted having regard to the fines and other payments which would have been payable had a renewable lease been granted pursuant to the original contract.

If any dispute arises as to the adjustment of the rent, this has also to be submitted to the Minister of Agriculture and Fisheries.

Future contracts.

As regards a contract made after 1925 for the grant of a perpetually renewable interest, this will operate as an agreement to demise a term of 2,000 years free from any obligation for renewal and from the payment of any fines, etc. Here again there is no inducement, I think, for anyone to enter into such a contract after 1925.

Limit of renewals.

Then, but for an entirely different reason, there is a prohibition against entering into any covenant, not for perpetual renewal, but any covenant for renewal, for a term exceeding sixty years. If such a contract is entered into, it will be void.

The object of this is to prevent what might in effect amount to a perpetual lease being granted, and I think you will agree that sixty years is a sufficient period to authorise.

Terms to take effect within twenty-one years.

In this connexion I ought to refer you perhaps to s-s. (3) of s. 149 of the Law of Property Act, 1925, under which a term granted at a rent or in consideration of a fine will be void unless it takes effect within twenty-one years from the date of the lease. The object of this is to avoid unnecessary complications of title, for under that section a reversionary term will take effect as a term of years, without actual entry, and not merely as an *interesse termini*; and I should like also to point out that according to the definition of a "term of years absolute" it is not essential that the term should be in possession, whereas in the case of an estate in fee simple it must be an estate in fee simple absolute and in possession in order that it may be a "legal estate."

Filing of leases.

A term of 2,000 years is so long that it was thought that the instruments creating it might become undecipherable. To guard against difficulties of this kind, provision is made for the lease or underlease to be deposited at the Central Office, and for office copies to be issued from time to time which will be evidence of the original instrument.

Additional rent.

We can now consider for a few minutes the method of ascertaining the additional rent which is made payable in lieu of the fines and other sums which would be payable if the lease were renewed in the ordinary course.

This is provided for by para. 12 of the 15th Sched., and you will notice that no additional rent is to be made payable on account of the costs of any work which is rendered unnecessary by reason of a term certain being substituted for a renewable term.

Under that paragraph the additional rent will be ascertained on the basis of the fines and other payments which would have been payable on the occasion of the first renewal after 1925 if the lease had remained renewable. Thus if a lease is renewable at the end of fourteen years for a fine of, say, £14, the parties will generally agree to add to the yearly rent an annual sum which would, if accumulated at say five per cent. compound interest, amount to £14 at the end of the fourteenth year. If you will look at your tables you will find that this works out at about 14s. 3d. per annum. No doubt, in difficult cases, an actuary will have to be employed, but, as a general rule, I apprehend that you will be able to make your calculations from your tables without any real difficulty.

Forfeiture.

The compensation for the loss of the right to re-enter in default of payment of a fine for renewal whether on the dropping of a life (para. 12 (6)) or on the expiration of a term certain (para. 16 (3)) will be based on the existing practice (if any) adopted for ascertaining the loss, unless an injustice would arise, when the Minister can deal with the matter. In default of any existing practice five per cent. of the annual value has been prescribed under the rules.

Additional rent.

If the parties are unable to agree upon the additional rent then the matter must be left for the decision of the Minister subject to appeal to the court.

When the parties have arranged the amount of the additional rent this will appear by endorsements on the lease and on the counterpart to be signed by the parties personally.

The additional rent is in default of agreement payable on the 1st January in every year (para. 12 (1)), the first instalment is payable on 1st January, 1927, but the parties will usually agree that the additional rent shall be paid on the same days as the original rent.

Commutation.

The additional rent can be commuted by a capital payment (para. 14) this can be raised and paid by persons in a fiduciary capacity out of capital.

Sales of the interests acquired.

When the lessee comes to dispose of his interest he will, of course, in the particulars of sale or in the contract for sale, refer to the fact that the lease was originally a perpetually renewable lease and that what he is now conveying will be the residue of the 2,000 years term given him by the 15th Sched. at the altered rent, unless it has been commuted.

General conditions of 1925.

I think that the profession at large owe a great debt to the Council of The Law Society for adopting the General Conditions of 1925, which were originally prepared for the Lord Chancellor. These Conditions have been scrutinized by a very large number of Provincial Law Societies, and I am glad to say that, speaking as a whole, I believe they are satisfied with the arrangements which have been made.

These Conditions, if generally adopted throughout the country, will greatly lighten your labours when you come to deal with such matters as enfranchised land and perpetually renewable leases or underleases which have been converted into long terms.

I know it will be a difficult task, particularly in the next lecture, but I shall endeavour in these lectures not to send you away with a headache, my idea is merely to deal with such matters as you can carry in your heads for general working purposes.

I have a few questions to answer which have already been submitted to me; when I have dealt with these I will ask any gentleman who desires it to ask me any question arising out of the syllabus for this lecture, the answer to which he considers would be of service to the profession.

QUESTIONS:

The following questions have been asked by Mr. Knocker. He also asked me a great number more, but they were very special and therefore I do not propose to deal with them.

The first question relates to heriots; he says: "Is it clear that the lord must still mark his heriot in respect of enfranchised copyholds? How else can the identity of the beast to be valued be ascertained?" My answer is: It is perfectly true that s. 128 (2) only relates to copyhold land as defined by that Act, but heriots remain to be extinguished in regard to freehold manors, s. 138 (1). They have to be compensated for on the average value of the last three heriots taken or paid: 2nd Sched., para. 8. I certainly advise the heriots to be marked, for unless that is done I do not see how the average value is to be ascertained.

The next question he has asked is about wills. He says: "Who is the person who can or is concerned to require the production of a will after 1925? It only passes an equitable interest." The assent (plus probate) will be the material document of title.

He then asks the following question: "In view of s. 85 of the Act of 1894"—he means the Copyhold Act of 1894—"is not the steward bound to record the will irrespective of the parties' wishes, and can he not be paid for so doing?"

The answer clearly is in the negative. The only persons interested in wills are the beneficiaries thereunder.

His next question is about the 12th Sched. of the Amending Act. He says: "Prior to January, 1926, a demise for a long term would have created a case for a fine for licence to demise." The answer is: "Certainly, it would, that is perfectly true." He also says: "Is this fine also lost on the vesting of a term of years on the mortgagee?" The answer is: that if the mortgagee has been admitted and paid his fine, you do not want to make him pay another. If he has not been admitted then he must pay a fine when a transaction is effected which would have involved an admission under the old law.

The next question is: "Does any assignment of the term with the concurrence of the mortgagor require production, etc.?" The answer is "Yes." He then suggests: "An unadmitted mortgagee would not have been regarded as the lord's tenant, nor would his estate have attracted manorial incidents until his admittance." That is correct.

Then he refers to s. 130, s-ss. (3) and (4). He says: "Assuming that before the 1st of January, 1926, the mortgagee of copyholds took admittance, it would be subject to the mortgagor's rights of redemption?" That is, of course, so. Then, "The mortgagee would pay a fine on admittance?" The answer is "Yes, if he were admitted." He then goes on: "If the mortgagee thereafter forecloses, does s-s. (4) of s. 130 entitle the lord to call upon the mortgagee after foreclosure in effect to be admitted in his absolute right, and pay a second fine?" The answer is: "No—s. 4 only applies where the mortgagee has not been admitted."

This is the end of Mr. Knocker's questions, and I am quite sure they are very valuable.

Then there is an important question by Mr. Davis. He says: "What is the position of a lessee who holds a perpetually renewable lease and omits to have endorsed thereon within one year by the lessor an acknowledgment that the term is computed into a 2,000-years term?" In the first place, that is not what is required; but what is required is that there should be an acknowledgment endorsed on the lease in question, that the lease is renewable; but if he does not bring his lease to the lessor within the year the answer is that the right of re-entry arises; but, of course, the court, in proper cases, could give relief to the lessee if he showed a proper reason for not complying with the implied covenant.

The next question is by Mr. Hopwood. He says: "Why should not the expenses of the enfranchisement be paid by the tenant in any event as in the case of enlarging perpetually renewable leases; by waiting for five years the tenant can share the duty of giving notice to the landlord, and this knowledge will operate to cause delay on the part of the tenant to settle the compensation?"

I will answer the first part of the question first. The reason why the legislature was advised not to put the expenses on the tenant in every case, was that there are cases in which it is more to the advantage of the lord that the incidents should be extinguished, than to the tenant's. I am afraid I have not made myself very clear in this lecture, otherwise it would have been manifest to Mr. Hopwood that in about ninety-nine out of a hundred cases the costs in fact will be borne by the tenant. Then he said: "By waiting for five years the tenant can throw the duty of giving notice on to the landlord." With all respect to Mr. Hopwood, that is not the fact. I do not see why, because he is given five years to collect his money to pay for the compensation, that that in any way assists him in imposing on the lord of the manor an obligation to give notice. If the lord of the manor is in that plight, he can, if necessary, postpone the notice until half an hour before the ten years have expired and trust to the section I have already read to you as showing that the costs notwithstanding, ought to be borne by the tenant because the tenant has acted unreasonably. He then says that if it is known that the lord is to wait for five years, it will be impossible to settle the compensation. I do not see how that can possibly happen, because the compensation is now settled by the Act itself in all ordinary cases. It is only where some special customs arise that you have to go to the Minister of Agriculture for an order dealing therewith as far as the ascertainment of the compensation is concerned. It is all down in black and white in the Act itself. There is some arithmetical process to be gone through to get at the results, that is all.

Then Mr. Howard says: "A testator devises copyholds to his executors on trust for sale, and he dies in 1915. No admission has yet been taken by the executors. They enter into a contract to sell, and they complete on the 6th January, 1926." That is to say, after the Act comes into force. "So it is assumed, that the lord would be entitled to a fine on the admission of the executors or heir and then again on a surrender by them to the purchaser. How will those fines be borne in consequence of a conveyance to the purchaser on the 1st of January, 1926?"

The answer is this, Gentlemen, that within six months of the 6th January, 1926, the purchaser would have to take that conveyance to the steward of the manor. The steward will refuse to endorse it, and it will not pass the legal estate until that purchaser has paid the double fine.

Then Mr. Johnson asks: "In the case of a purchaser of land enfranchised by the Act—what evidence should the purchaser obtain in order to ascertain whether the mines and minerals are included in the property purchased? Is a statutory declaration by the steward appropriate, and is there any enquiry into the lord's title necessary?" (The Act of 1922, Sched. 12, para. 5.)

The answer is this: *Primâ facie*, no compensation agreement affects the lord's with respect to the minerals. Personally, I know of cases in Wales where the minerals entirely belong to the tenants and not to the lords at all; in cases like that there is no reason to mention them in the agreement. They are part of the tenants' rights, and they will have the mines and minerals; but in the ordinary course, if the tenant

wishes to obtain the lords' rights to mines and minerals, he will have to arrange that in the compensation agreement. If it is so arranged that operates as a conveyance or lease of the mines and minerals by the lord to the tenant, but on the other hand, I think I pointed out that if the lord is anxious to work the mines and minerals in connexion with others, it would be worth his while to acquire the rights of the tenants to the mines and minerals, and probably also surface rights to assist him in connexion therewith. But, as far as the title is concerned, therefore, you have to go into the matter of the mines or minerals exactly as you have to do under the existing law. They have not altered that, except to this extent that a compensation agreement is a perfectly good root of title as far as the lord's right to enter into the agreement is concerned, just as under the existing law an enfranchisement deed is a perfectly good root of title to commence the title to the freehold of the land. To that extent the purchaser can rely on the compensation agreement provided that agreement does include the mines and minerals in question. If it does not include them, *primâ facie*, the lord has retained his rights. If he has not got a right to the mines and minerals, then the tenant must prove, as he would be able to do in parts of Wales, that the original copyhold of the tenant included the mines and minerals.

Then Mr. Bennett says: "Trustees of a will, without a trust for sale, who have been admitted hold copyholds in trust for four persons in equal shares owing to the recent death of the tenant for life. They, after the 1st of January, 1926, assent, can the four persons be regarded as joint tenants and estate owners? If so, are the latter the proper persons to enter into the compensation agreement with the lord of the manor?"

Mr. Bennett has contrived to put together several questions in one. In the first instance I gather that the trustees in question are admitted trustees. If they hold as trustees and not as personal representatives, they cannot make an assent. If I may say so, we are rather going ahead and anticipating another lecture, but talking from memory, I may be wrong, the land will vest in the trustees in question on trust for sale, and they will be able to make a title, because the land is vested in them. I think that this is one of the cases where the land will vest in the trustees, although they are bare trustees. The answer is that they are the proper persons to enter into the compensation agreement, because they become trustees for sale.

Then Mr. Tucker asks: "In the case of a contract for the purchase of copyhold which fixed the date for completion shortly before the 1st January, could the purchaser be advised to wait until after the 1st of January and then take a conveyance?"

The answer to that question is this, the matter arises in contract, and therefore the vesting provisions will not apply, and the land will be the property of the vendor at the time that the axe falls, and accordingly he will be the original person to take the enfranchised land. He will make a title to it as enfranchised land after the 1st of January, and if the purchaser so desires, he can make an arrangement of course for getting rid of the manorial incidents.

(That finished the questions).

The President (Mr. Herbert Gibson, M.A.) proposed a vote of thanks (carried with acclamation), for the interesting and delightful lecture they had heard, and he was sure they would look forward with pleasure to the remaining lectures of the course.

(From the transcript of the Shorthand Notes of The Solicitors' Law Stationery Society, Limited, 104-7 Fetter Lane, E.C.4.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4%. Next London Stock Exchange Settlement. Thursday, 19th November, 1925.

	Middle Price, 4th Nov.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 2½%	55	4 11 0	—
War Loan 5% 1929-47	99⅞	5 0 0	5 0 0
War Loan 4½% 1925-45	94⅛	4 15 0	4 18 0
War Loan 4% (Tax free) 1929-42 ..	100	4 0 0	4 0 0
War Loan 3½% 1st March 1928 ..	97½	3 12 6	4 17 6
Funding 4% Loan 1960-90	86⅞	4 12 0	4 12 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	92⅞	4 6 0	4 8 0
Conversion 4½% Loan 1940-44 ..	97⅜	4 12 6	4 16 6
Conversion 3½% Loan 1961	75½	4 13 0	—
Local Loan 3% Stock 1921 or after ..	64⅜	4 13 0	—
Bank Stock	251½	4 15 0	—
India 4½% 1950-55	88⅝	5 1 6	5 4 0
India 3½%	67½	5 4 0	—
India 3%	57½	5 4 6	—
Sudan 4½% 1939-73	95	4 14 6	4 17 6
Sudan 4% 1974	86½	4 12 6	4 17 0
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	80¼	3 15 0	4 10 6
Colonial Securities.			
Canada 3% 1938	83½	3 13 0	4 16 0
Cape of Good Hope 4% 1916-36 ..	91½	4 7 6	4 19 6
Cape of Good Hope 3½% 1929-49 ..	80¼	4 7 0	4 19 6
Commonwealth of Australia 4½% 1940-60	99	4 16 0	4 18 0
Jamaica 4½% 1941-71	93½	4 16 6	4 17 0
Natal 4% 1937	91½	4 7 0	4 19 0
New South Wales 4½% 1935-45 ..	93½	4 16 6	5 1 6
New South Wales 4% 1942-62	84	4 15 6	5 0 0
New Zealand 4½% 1944	95⅝	4 14 0	4 19 0
New Zealand 4% 1929	95⅜	4 3 6	5 1 0
Queensland 3½% 1945	78¼	4 9 6	5 7 0
South Africa 4% 1943-63	87½	4 12 0	4 15 0
S. Australia 3½% 1926-36	86	4 1 6	5 6 0
Tasmania 3½% 1920-40	84½	4 3 0	5 1 0
Victoria 4% 1940-60	84	4 15 0	4 19 0
W. Australia 4½% 1935-65	93½	4 16 0	4 18 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	64	4 13 6	—
Bristol 3½% 1925-65	76½	4 11 6	5 0 0
Cardiff 3½% 1935	88	3 19 6	5 0 6
Croydon 3% 1940-60	68¼	4 8 0	5 1 0
Glasgow 2½% 1925-40	76	3 6 0	4 11 6
Hull 3½% 1925-55	77½	4 10 6	4 19 0
Liverpool 3½% on or after 1942 at option of Corpn.	75½	4 13 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53xd	4 14 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63½xd	4 15 0	—
Manchester 3% on or after 1941 ..	64½	4 13 0	—
Metropolitan Water Board 3% 'A' 1963-2003	65	4 12 6	4 14 0
Metropolitan Water Board 3% 'B' 1934-2003	65	4 12 6	4 14 0
Middlesex C.C. 3½% 1927-47	81½	4 6 0	4 19 6
Newcastle 3½% irredeemable	74½	4 14 0	—
Nottingham 3% irredeemable	63	4 15 0	—
Plymouth 3% 1920-60	68½	4 8 0	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81¼	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 1 0	—
Gt. Western Rly. 5% Preference ..	94	5 6 0	—
L. North Eastern Rly. 4% Debenture ..	78½	5 2 0	—
L. North Eastern Rly. 4% Guaranteed	76	5 5 6	—
L. North Eastern Rly. 4% 1st Preference	71	5 12 6	—
L. Mid. & Scot. Rly. 4% Debenture ..	80¼	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	78½	5 1 6	—
L. Mid. & Scot. Rly. 4% Preference ..	74	5 8 0	—
Southern Railway 4% Debenture ..	79½	5 0 6	—
Southern Railway 5% Guaranteed ..	98	5 2 0	—
Southern Railway 5% Preference ..	91½	5 9 0	—

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